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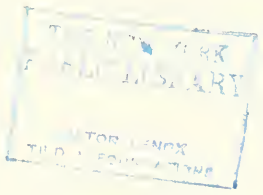

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C Cushing

A

MEMORIAL

OF

CALEB CUSHING,

FROM THE

CITY OF NEWBURYPORT.

——"TO THE QUESTION, WHETHER THE UNION IS WORTH HAVING, I REPLY THAT IT IS NOT ONLY TO BE CHERISHED FOR ALL OF GOOD WHICH IT GIVES, BUT ALSO FOR ALL OF UNUTTERABLE ILL WHICH ITS DISSOLUTION INEVITABLY INVOLVES."— *Cushing's address at the laying of the corner stone of City Hall, Newburyport, July* 4, 1850.

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NEWBURYPORT:
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CITY OF NEWBURYPORT.

In Common Council, October 6, 1879.

Ordered, The Mayor and Aldermen concurring, that a joint special committee, consisting of the Mayor and two members of the Common Council be, and hereby are, appointed to prepare and publish in a convenient form, a full report of the proceedings at the memorial services to be held in City Hall, Wednesday, Oct. 8, 1879, the cost of said publication to be charged to the account of Incidentals.

In Common Council, October 6, 1879.

Adopted under a suspension of the rules, and Messrs. William E. McQuillen and Thomas H. Boardman appointed on the part of this board.

Attest,

Thomas E. Cutter, Clerk.

In Board of Aldermen, October 6, 1879.

Adopted in concurrence. Attest,

George H. Stevens, City Clerk.

CITY OF NEWBURYPORT.

In Common Council, November 3, 1879.

Resolved, That the thanks of the City Council are hereby tendered Hon. George B. Loring, of Salem, Mass., for his able and appreciative eulogy of our late distinguished townsman, Hon. Caleb Cushing, on the occasion of the recent memorial service held in City Hall, Newburyport, Mass.

Resolved, That the Mayor be, and hereby is, directed to request a copy of this eulogy for publication in pamphlet form, with the other proceedings of that occasion, and to ask that the original manuscript may be placed in the hands of the directors of the Public Library, to be carefully preserved in the archives of that institution.

In Common Council, November 3, 1879.

Passed.—Attest,

William A. Davis, President.

In Board of Aldermen, November 3, 1879.

Passed in concurrence.—Attest,

John J. Currier, Mayor.

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DEATH OF CALEB CUSHING.

Caleb Cushing died at his residence in Newburyport, on Thursday evening, January 2, 1879, in the seventy-ninth year of his age. This sad intelligence quickly spread over the country; but nowhere was it received with more profound regret and sorrow than among his own townsmen. For several months previous to this event his naturally strong and vigorous constitution gave evidence of failing health and strength; and, although under the care of a physician, yet he had been able to attend to his professional engagements as usual, and at the time of his death had been confined to his house only a few days.

Friday morning Mayor Smith called a special meeting of the Board of Aldermen to take action in relation to this sorrowful event, and ordered the church bells in the city to be tolled one hour at noon on that day. At the special meeting of the Mayor and Aldermen, held Friday evening, the following resolutions were unanimously adopted:

Whereas, we have learned with feelings of the deepest sorrow of the sudden decease of our esteemed and eminent fellow-towns-

man, Hon. Caleb Cushing, by which event, in the Providence of God, the nation has lost one, who has for a long term of years filled various positions of trust and responsibility in its government—the State, a participant in the duties of the legislative and judiciary departments,—and this city, one who first occupied the position of mayor and who has ever been regarded as the valued citizen and distinguished statesman, therefore,

Resolved, That we unite with the bereaved relatives in their sorrow, and tender to them our deepest sympathy in their affliction.

Resolved, That a copy of these resolutions be sent to the family of the deceased.

Resolved, That the City Clerk be requested to enter these resolutions on his records, and furnish a copy of the same to the press for publication.

The funeral of Mr. Cushing took place at his late residence on High street, Monday afternoon, the sixth day of January. The day was chilly and cold. The sky was overcast, and a light, newly fallen snow covered the ground. There was no public demonstration beyond the tolling of the church bells by order of the City Council, and the draping of Essex Hall, by the Cushing Guard who occupied the building as an armory.

The brief and simple religious services were attended by his relatives and personal friends, by the Mayor of the new city government, Hon. John J. Currier, and several ex-Mayors; by members of the bar, and many clergymen, and prominent citizens, and distinguished gentlemen from other cities and towns.

A single floral tribute lay on the casket, the design being the sword of a general. The hilt was composed of purple and the guard of golden immortelles : the blade of white carnation pinks, and the edge of white immortelles fringed with smilax, and a

star at the hilt. This was an offering received from the Cushing Guard. The silver plate, attached to the black walnut casket which was covered with a black broad-cloth having silk velvet mouldings, bore this inscription :

CALEB CUSHING.

BORN JANUARY 17, 1800.

DIED JANUARY 2, 1879.

Rev. Daniel T. Fiske, D. D., of Newburyport, conducted the services, and before reading selections from scripture, he said:

"This hour and this service are for the living more than for the dead. A great man has indeed fallen among us; a man distinguished alike for his rare natural endowments, his extensive culture and erudition, and his varied public services; a man who has for half a century filled a large place in our country's history, has ably and honorably represented the nation abroad, and has filled many important offices of civil trust and responsibility at home. The departure of such a man calls for some public tribute of respect for his memory, and acknowledgment of the eminent services he has rendered our city, our commonwealth, our country and the world. Some fitting occasion and fitting lips will doubtless be found for the utterance of such a merited tribute, but to-day we come as mourners, to bear to its last resting place all that was mortal of a brother, a friend, a neighbor, a fellow-citizen. For support and comfort in this duty we need not the words of eulogy, but the words of God and the words of prayer. Let us then attend to the reading of the Holy Scriptures, as they speak to our stricken hearts."

He then read the following appropriate selections:

Lord, thou hast been our dwelling place in all generations. Before the mountains were brought forth, or ever thou hadst formed

the earth and the world, even from everlasting to everlasting, thou art God. Thou turnest man to destruction; and sayest, Return ye children of men. For a thousand years in thy sight are but as yesterday when it is past, and as a watch in the night. * * * The days of our years are three score and ten; and if by reason of strength they be fourscore years, yet is their strength labor and sorrow; for it is soon cut off, and we fly away. * * * So teach us to number our days, that we may apply our hearts unto wisdom.

Psalms xc: 1—4 and 10, 12.

Daniel answered and said, Blessed be the name of God for ever and ever; for wisdom and might are his; and he changeth the times and the seasons; he removeth kings and setteth up kings; he giveth wisdom unto the wise, and knowledge to them that know understanding; he revealeth the deep and secret things; he knoweth what is in the darkness, and the light dwelleth with him. I thank thee, and praise thee, O thou God of my fathers, who hast given me wisdom and might, and hast made known unto me now what we desired of thee; for thou hast made known unto us the king's matter. Daniel ii: 20—23.

Is there not an appointed time to man upon earth? Are not his days also like those of a hireling? Job vii: 1.

Seeing his days are determined, the number of his months are with thee, thou hast appointed his bounds that he cannot pass.

Job xiv: 5.

It is appointed unto men once to die, but after this the judgment.

Hebrews ix: 27.

All the days of my appointed time will I wait, till my change come.

Job xiv: 14.

Thou shalt come to thy grave in a full age, like as a shock of corn cometh in in his season. Job v: 26.

There is no man that hath power over the spirit to retain the spirit; neither hath he power in the day of death; and there is no discharge in that war. Ecclesiastes viii: 8.

Then shall the dust return to the earth as it was; and the spirit shall return unto God who gave it. Ecclesiastes xii: 7.

I was dumb, I opened not my mouth, because thou didst it. Remove thy stroke away from me; I am consumed by the blow of thine hand. Psalms xxxix: 9, 10.

Like as a father pitieth his children, so the Lord pitieth them that fear him. For he knoweth our frame; he remembereth that

we are dust. As for man his days are as grass; as a flower of the field, so he flourisheth. For the wind passeth over it, and it is gone; and the place thereof shall know it no more. But the mercy of the Lord is from everlasting to everlasting upon them that fear him, and his righteousness unto children's children.

Psalms ciii: 13—17.

For the Lord will not cast off forever: But though he cause grief, yet will he have compassion according to the multitude of his mercies. For he doth not afflict willingly, nor grieve the children of men. Lamentations iii: 31—33.

Blessed be God, even the Father of our Lord Jesus Christ, the Father of mercies, and the God of all comfort; Who comforteth us in all our tribulation, that we may be able to comfort them which are in any trouble, by the comfort wherewith we ourselves are comforted of God. For as the sufferings of Christ abound in us, so our consolation also aboundeth by Christ. ii Corinthians i: 3—5.

Jesus said unto her, I am the resurrection, and the life; he that believeth in me, though he were dead, yet shall he live.

John xi: 25.

Let not your heart be troubled; ye believe in God, believe also in me. In my father's house are many mansions; if it were not so I would have told you. I go to prepare a place for you. And if I go and prepare a place for you, I will come again and receive you unto myself; that where I am, there ye may be also. John xiv: 1—3.

There is one glory of the sun, and another glory of the moon, and another glory of the stars; for one star differeth from another star in glory. So also is the resurrection of the dead. It is sown in corruption, it raised in incorruption: It is sown in dishonor, it is raised in glory; it is sown in weakness, it is raised in power; it is sown a natural body, it is raised a spiritual body. There is a natural body, and there is a spiritual body. * * * And as we have borne the image of the earthy, we shall also bear the image of the heavenly. Now this I say, brethren, that flesh and blood cannot inherit the kingdom of God: neither doth corruption inherit incorruption. Behold I show you a mystery; We shall not all sleep, but we shall all be changed, in a moment, in the twinkling of an eye, at the last trump; for the trumpet shall sound, and the dead shall be raised incorruptible, and we shall be changed. For this corruptible must put on incorruption, and this mortal must put on immortality. So when this corruptible shall have put on incorruption,

and this mortal shall have put on immortality, then shall be brought to pass the saying that is written. Death is swallowed up in victory. O death, where is thy sting? O grave, where is thy victory? The sting of death is sin, and the strength of sin is the law. But thanks be to God, which giveth us the victory, through our Lord Jesus Christ. 1 Corinthians xv: 41—44 and 49—57.

A brief and fervent prayer closed the religious services at the house.

A long line of carriages, filled with relatives and friends, followed the remains to Oak Hill Cemetery, where they were temporarily deposited. They have since been removed to the New Burial Ground on Hill street, where they now rest by the side of his wife, who died many years ago. The simple marble monument that marks his grave bears the following inscription:

IN MEMORY OF
CALEB CUSHING,
SON OF JOHN N. AND LYDIA DOW CUSHING,
BORN IN SALISBURY,
JANUARY 17TH, 1800;
DIED IN NEWBURYPORT,
JANUARY 2, 1879.

MEMORIAL SERVICES.

ACTION OF THE CITY GOVERNMENT.

Monday morning, the sixth day of January,—the funeral of Mr. Cushing having been announced for the afternoon of the same day,—the members of the new city government assembled to take the oath of office. Mayor Currier in his inaugural address, referring to the death of Caleb Cushing, said:

"Prompted by the thoughts which this occasion suggests, we cannot forget that a solemn and impressive burial service will be read to-day over the lifeless remains of one of our citizens, distinguished and honored alike in the State and nation, who, as the first Mayor of Newburyport, deserves especial and honorable mention here.

While this is neither the time nor the place to portray the life and character of Caleb Cushing, whose name and fame have penetrated to distant climes, and whose great ability and rare scholarship are known and acknowledged throughout the length and breadth of our own land, yet it is eminently just and proper that his great public services to the nation, and to this city, should be held in grateful remembrance by us; and I trust that, at an early day, some one, competent and qualified to perform the task, will be selected by the City Council to give expression,in an appropriate memorial service, to the great respect and esteem we have for the memory of our fellow

townsman,—the scholar, the jurist, the orator, and the statesman."

Immediately after the organization of the City Council the following order was introduced and unanimously adopted by both branches of the City Government:

IN BOARD OF ALDERMEN, January 6. 1879.

ORDERED, The Common Council concurring, that his Honor the Mayor be and hereby is authorized and instructed to cause the bells of the various churches in this city to be tolled from quarter-past three to quarter-past four o'clock p. m. during the funeral ceremonies of the late Hon. Caleb Cushing, the first Mayor of this city.

IN BOARD OF ALDERMEN, January 6, 1879.

Adopted.—Attest,

GEO. H. STEVENS, City Clerk.

IN COMMON COUNCIL, January 6, 1879.

Adopted in concurrence.

Attest,

THOMAS E. CUTTER, Clerk.

At an adjourned meeting of the City Council held at half-past seven o'clock on the evening of the same day, the following order was adopted on motion of Alderman Ayers:

IN BOARD OF ALDERMEN, January 6, 1879.

ORDERED, The Common Council concurring, that so much of the Mayor's address as relates to a proposed memorial service in honor of the late Caleb Cushing be referred to a special committee consisting of the Mayor and two Aldermen on the part of this board, and three members of the Common Council; and that said committee be authorized to make the necessary arrangements and report at a future meeting of the City Council.

IN BOARD OF ALDERMEN, January 6, 1879.

Adopted, and Alderman Ayers and Evans appointed on the part of the Board of Aldermen.

Attest,

GEORGE H. STEVENS, City Clerk.

In Common Council, January 6, 1879.

Adopted in concurrence, and Messrs. Greeley, Huse and Johnson appointed on the part of this board.

Attest,

Thos. E. Cutter, Clerk.

At a meeting of the City Government, held September first, this special committee made the following report, which was accepted and the accompanying order adopted:

The committee on Memorial Service to whom was referred that portion of the Mayor's address relating to the proposed public services in commemoration of the life and character of the late Hon. Caleb Cushing, have duly considered the matter, and beg leave to submit the accompanying report:

The extra session of Congress, extending late into the summer, requiring the presence in Washington of Hon. George B. Loring, who had consented to deliver the address on the occasion of the proposed memorial service, compelled your committee to defer the exercises until Wednesday, October 8, 1879, and they, therefore, in order to complete the arrangements necessary to carry out the programme successfully, would recommend the passage of the accompanying order.

John J. Currier, Chairman.

Ordered, The Mayor and Aldermen concurring, that the committee on memorial service in commemoration of the late Hon. Caleb Cushing be and hereby are authorized to make the necessary arrangements for the proposed public exercises in City Hall, on Wednesday, October 8, 1879, and that the expenses incurred in carrying out the programme adopted by the committee, not to exceed the sum of three hundred dollars, shall be charged to the account of incidentals.

In Common Council, September 1, 1879.

Adopted under a suspension of rules.

Attest, Thos. E. Cutter, Clerk.

In Board of Aldermen, September 1, 1879.

Adopted in concurrence.

Attest,

George H. Stevens, City Clerk.

The committee proceeded forthwith to make the necessary arrangements for the memorial service. Among those officially invited, in behalf of the City Council, to attend the exercises at City Hall, were the following:

His Excellency the Governor of Massachusetts, and His Honor the Lieutenant-Governor; Judges of the Supreme Judicial Court of Massachusetts; Speaker of the Massachusetts House of Representatives; State Senators from the Fourth and Fifth Essex Districts; Attorney General of the United States; Hon. William M. Evarts, Secretary of State, and Ex-Secretary Hon. Hamilton Fish; past and present members of Congress from the Sixth Massachusetts District: Mayors of the cities in Essex County; Selectmen of Salisbury; Selectmen of Newbury; Officers of the Massachusetts Historical Society; Officers of the Essex Bar Association; President of Harvard College; College Classmates and other men of note in public and private life who were personal friends and acquaintances of Mr. Cushing.

DECORATIONS AND INVITED GUESTS.

Wednesday, the eighth day of October, will long be remembered as one of the finest of the autumnal season. The sky was clear and serene, and the warmth of Summer once more returned for a day. It threw a gleam of cheerfulness over the impressive ceremonies of this occasion.

The City Hall, in which the exercises were held, was appropriately dressed, the drapery being under the supervision of George Nelson Beales of Boston, and the floral decoration under the direction of Claude B. Gardner of West Newbury. Back of the rostrum the entire wall was hung with black and white, relieved only by the customary drooping flags, while against the centre of the walls, back of the stage, was a canopy of sombre black, inside of which and on a pedestal representing a fluted column, was a bust of Mr. Cushing executed by Mr. David M. French of Newburyport. Under the canopy and above the bust was the following inscription:

CALEB CUSHING.
BORN JANUARY 17, 1800.
DIED JANUARY 2, 1879.

The sides of the hall were also draped with heavy folds of black and white cloth, while curtains of

the same texture and colors hung from each window. The balcony was covered with the same material, and festoons of mourning extended from the centre of the ceiling to the sides, front and rear of the hall. In front of the balcony was this motto, in white letters on black cloth:

"MEN ARE WE, AND MUST GRIEVE WHEN EVEN THE SHADE
OF THAT WHICH ONCE WAS GREAT IS PASSED AWAY."

On a background of black with a border of autumn leaves surmounted by a bouquet of the same, in white letters, were the following mottoes, one between each window, "SCHOLAR—SOLDIER—STATESMAN—LINGUIST—LAWYER—JUDGE—LEGISLATOR—DIPLOMATIST."

On each window sill was a large cluster of variegated autumn foliage of brilliant hue and rare beauty, which, with the large bouquets of flowers in vases on the rostrum, greatly relieved the otherwise sombre appearance of the hall.

An oil painting of Mr. Cushing, a recent gift from Mr. James Wormley, of Washington, to the city of Newburyport, was placed in front of the speakers' desk, in full view of the audience.

Upon the platform were the following named gentlemen:

JUSTICE OF THE SUPREME COURT OF MASSACHUSETTS.

Hon. William C. Endicott, *Salem.*

PAST AND PRESENT MEMBERS OF CONGRESS FROM THE SIXTH MASSACHUSETTS DISTRICT.

Hon. Benjamin F. Butler; Hon. Charles P. Thompson; Hon. George B. Loring.

STATE SENATORS.

Hon. George W. Cate, *Senator of the 4th Essex District.*

MAYORS OF NEIGHBORING CITIES.

Hon. Henry K. Oliver, *Salem;* Hon. Nathan S. Kimball, *Haverhill;* and Hon. William H. Sise, *Portsmouth.*

SELECTMEN OF SALISBURY.

William H. B. Currier, Esq.; Joseph M. Eaton, Esq.

SELECTMEN OF NEWBURY.

Nathaniel Dole, Esq; Joseph N. Rolfe, Esq.; Horace F. Longfellow, Esq.

OFFICERS AND MEMBERS OF ESSEX BAR ASSOCIATION.

Hon. Nathan W. Hazen, *Andover;* Hon. Eben F. Stone, *Newburyport;* Hon. Henry Carter, *Haverhill;* Hon. Daniel Saunders, *Lawrence;* Leverett S. Tuckerman, Esq., *Salem.*

EX-MAYORS OF NEWBURYPORT.

Hon. George W. Jackman, jr.; Hon. Albert Currier; Hon. Eben F. Stone; Hon. Warren Currier; Hon. Benjamin F. Atkinson; Hon. Jonathan Smith.

OFFICERS AND MEMBERS OF THE MASSACHUSETTS HISTORICAL SOCIETY.

George Dexter, A. M., *Recording Secretary;* Charles W. Tuttle, A. M., *of the Executive Committee of the Council;* Stephen Salisbury, LL D., Rev. William S. Bartlet, A. M., and William C. Endicott, A. B., *Members.*

COLLEGE CLASSMATES.

Dr. John Orne Green, *Lowell;* Rev. Robert F. Walcutt, *Boston;* Hon. Stephen Salisbury, LL. D., *Worcester;* Hon. Samuel E. Sewell, *Boston.*

OTHER GUESTS.

Hon. Jeremiah S. Black, *of Pennsylvania, Attorney General under President Buchanan;* Major Ben: Perley Poore, *West Newbury;* Colonel Isaac Hull Wright, *Boston;* Thomas W. Pierce, Esq., *Topsfield;* General W. W. H. Davis, *editor Democrat, Doylestown, Pa.*; Frank W. Hackett, Esq., *Portsmouth;* William P. Sargent, Esq., *Boston;* Patten Sargent, Esq., *Merrimac;* Rev. William W. Newell, D. D., *New York;* Alex. Porter Morse, Esq., *Washington;* General Josiah B. Kinsman; Lawrence B. Cushing, Esq., Hon. Richard S. Spofford; Hon. E. Moody Boynton; James Parton, Esq.; Rev. William W. Newell, jr.; Rev. Edward L. Drown; Rev. Samuel J. Spalding, D. D.

THE CITY GOVERNMENT OF NEWBURYPORT.

Hon. John J. Currier, Mayor; Albert Cheever, John Woodwell, William H. Noyes, Charles L. Ayers, Thomas Mackinney, John P. Evans, Aldermen.

William B. Porter, Rufus Adams, Nathaniel Greeley, Isaac Poor, Thomas Huse, Jr., Robert G. Sargent, William A. Davis, Willard J. Hale, Thomas H. Boardman, Alvin D. Russell, Arthur C. Richardson, Horace L. Balch, Daniel W. Cate, William R. Johnson, Joseph Hall, William E. McQuillen, Joseph S. Bailey, William H. Whitmore, Jr., Councilmen.

John N. Pike, Esq., *City Solicitor;* George H. Stevens, *City Clerk;* George W. Piper, *City Treasurer;* Thomas E. Cutter, *Clerk of Common Council.*

EXERCISES AT CITY HALL.

After a march and aria from Mozart's "Magic Flute," by the Germania Orchestra, of Boston, the Mayor, Hon. John J. Currier, said:

Ladies and Gentlemen: — We come here to-day to pay a tribute of respect to a distinguished townsman and friend. I ask your silent and reverend attention while prayer is offered by Rev. Mr. Newell, of this city.

Rev. William W. Newell, jr., pastor of the Old South church, then invoked the Divine blessing in substantially the following words:

Almighty God, unto whom all nations pray, we come unto Thee in prayer.

We thank Thee that Thou hast taught us to memorialize all true worth, and to cherish the memory of those who were worthy.

We thank Thee for the many noble men whom Thou hast raised up for the founding and perpetuating of our beloved Republic, men whose names are dear

to every true American. We thank Thee that Thou hast put it into the hearts of these present to recall the life of one of our citizens, whose talents are recognized throughout the civilized globe. We thank Thee for those intellectual powers with which Thou hast gifted him, and for his long life of untiring industry, for the advancement of civilization.

We thank Thee that Thou didst use him to the making of our country more respected by other peoples—adding to our national honor, influence and prosperity.

And we pray Thee, O Lord, that Thou remember us this day, as we not only rejoice in his service, but mourn his death. Remember the more immediate circle of relatives who miss him in the family and in the home. O Thou tender Shepherd, comfort them in their affliction, and sanctify to them this trial. May this loss but draw them unto Thee for the richer gain of Thy grace to bless and to save. We pray for these before Thee, gathered here to-day out of respect or affection for the illustrious dead.

Remember him who is to address us; may his utterances be a kindly reminding of the dead, and a healthy quickening of the living.

Many of us are far advanced in life, associates with him we mourn. Grant unto such Thy sustaining love midst the increasing infirmities of old age. Forgive their sins, overrule for good their mistakes, make bright their deeds of sincerity and love, and prepare

them for the summons that shall call them to Thyself.

Remember also, we beseech Thee, the young present with us; may they be stimulated by the example of untiring study recalled to us to-day. May they be inspired to a truly great life, going beyond in industry, in intelligence, in nobility, in true Christian patriotism.

We pray for our city, that Thou wouldst make up to us for our loss, raising up in our midst many great and good.

We pray for our Nation. Remember the President of these United States and his Cabinet, and all who make and execute our laws. May they rule in thy fear, and according to Thy law. Bless all who hold places of honor and trust. Qualify them for their positions. Strengthen them against temptation. May their love of country be broader and deeper than love of self, and may the love of God be the ruling passion of their heart, soul, mind and strength.

Bless in especial manner our youth. May the young of America be truly wise, men of unwavering principle, and pure character. Above all, make them in the highest sense christian. May they remember that no generous deed is lost, no Christ-like life is vain, that that life is most successful which is most unselfish, most heartily consecrated to the good of man, and to the honor of God.

We pray for the world. Make our nation more and more an honor and a benefactor throughout the

earth. Rule Thou among the nations. Unite them in closer bonds of intercourse and fraternity. Bring peace instead of war, prosperity instead of distress, and right out of all wrong. Hasten the day when all shall accept and follow Jesus Christ as their King, their Savior and their God. And make the lives of our race eternally memorable in all that Thou wilt most honor and bless.

We ask all in Thy name, and for the sake of Thy divine Son, who has taught us to pray—"Our Father, which art in Heaven, hallowed be Thy name. Thy kingdom come, Thy will be done in earth as it is in Heaven. Give us this day our daily bread; and forgive us our debts as we forgive our debtors. And lead us not into temptation, but deliver u from evil. For Thine is the kingdom, and the power, and the glory, forever. Amen."

A select chorus under the direction of Prof. L. A. Torrens of Boston, then rendered "Cast thy Burden on the Lord," by Mendelssohn. The singers composing the choir were as follows:

Sopranos—Julia M. Wells, Mrs. Minnie S. Balch, Emma J. Flanders, Mrs. Hattie Dodge, Florence E. Lake, Lizzie Carr, Mrs. Carrie A. Potter, Mrs. Martha M. Torrens.

Altos—Gertie L. Cook, Clara Ballou, Bertie Perkins, Florence L. Choate, Hannah Maria Morse, Mrs. Lizzie Cheney, Mrs. Eliza M. Meader, Mrs. Lizzie Hale, Sarah McCusker, Mrs. Emnice Adams, Mrs. Belle P. Winslow.

Tenors—George H. Stevens, David True, John L. Pearson, John H. Carter, Edward S. Knight, William H. Sumner, Edward A. Hale, Henry W. Ballou.

Bassos—Theodore Castelhun, George W. Goodwin, John A. Maynard, Charles R. Todd, Dr. Charles F. Dodge, James W. Hervey, Charles H. Meader, Joseph W. Evans, William Tibbetts.

Pianist—Mrs. Isadore Cheney.

Rev. Edward L. Drown, rector of St. Paul's Church, Newburyport, then read the following selections of scripture:

The days of our years are threescore years and ten; and if by reason of strength they be fourscore years, yet is their strength labor and sorrow, for it is soon cut off, and we fly away.
Psalm xc: 10.

For what is your life? it is even a vapor, that appeareth for a little time and then vanisheth away. James iv: 14.

Then shall the dust return to the earth as it was; and the spirit shall return unto God who gave it. Ecclesiastes xii: 7.

For all flesh is as grass, and all the glory of man as the flower of grass. The grass withereth, and the flower thereof falleth away.
I Peter i: 24.

And thou shalt go to thy fathers in peace; thou shalt be buried in a good old age. Genesis xv: 15.

Thou shalt come to thy grave in a full age, like as a shock of corn cometh in in his season. Job v: 26.

Thou shalt rise up before the hoary head, and honor the face of the old man, and fear thy God; I am the Lord. Leviticus xix: 32.

With the ancient is wisdom; and in length of days understanding. Job xii: 12.

Happy is the man that findeth wisdom, and the man that getteth understanding. Proverbs iii: 13.

Length of days is in her right hand; and in her left riches and honor. Proverbs iii: 16.

Her ways are ways of pleasantness and all her paths are peace.
Proverbs iii: 17.

She is a tree of life to them that lay hold upon her; and happy is every one that retaineth her. Proverbs iii: 18.

Exalt her and she shall promote thee: She shall bring thee to honor when thou dost embrace her. Proverbs iv: 8.

She shall give to thine head an ornament of graee; a erown of glory shall she deliver to thee. Proverbs iv: 9.

For wisdom is better than rubies; and all the things that may be desired are not to be compared to it. Proverbs iii: 11.

Riches and honor are with me; yea, durable riches and righteousness. Proverbs viii: 18.

A wise man is strong; yea, a man of knowledge increaseth strength. Proverbs xxiv: 5.

Wisdom strengtheneth the wise more than ten mighty men which are in the city. Ecclesiastes vii: 19.

Where no counsel is, the people fall; but in the multitude of eounsellors there is safety. Proverbs xi: 14.

For He was wiser than all men; * * and his fame was in all the nations round about. I Kings iv: 31.

The thoughts of the diligent tend only to plenteousness; but of every one that is hasty only to want. Proverbs xxi: 5.

Seest thou a man diligent in his business? he shall stand before kings; he shall not stand before mean men. Proverbs xxii: 29.

And as we have borne the image of the earthy, we shall also bear the image of the heavenly. I Corinthians xv: 49.

And I heard a voice from heaven saying unto me, Write, blessed are the dead which die in the Lord from henceforth; yea, saith the Spirit, that they may rest from their labors, and their works do follow them. Revelation xiv: 13.

Wherefore eomfort one another with these words.
I Thessalonians iv: 18.

After a romanza from the opera of "Robert," by Meyerbeer, by the orchestra, the Mayor said:

Ladies and Gentlemen:—An accomplished son of Newburyport,—the Hon. George Lunt, of Scituate, who is unable to attend here to-day,—was for many years the friend and associate of Caleb Cushing, and has kindly contributed the following sonnet for this occasion.

CALEB CUSHING.

A SONNET.

Few men more versatile have played their part
On the world's shifting stage; not even he
Whom glorious Dryden, with consummate art,
Portrayed as "all mankind's epitome!"
Jurist profound, and in affairs of State
Of counsel apt; a tried diplomatist,
Spain, China, England, felt his power insist
Upon his country's cause; in strong debate
His fervid spirit led the fiery van;
This Scholar versed in tongues, this earnest man
By studious toil who won the title "Great,"
A stormy course for Fame's proud guerdon ran;
Through years not oft vouchsafed to human kind
Still grandly towered the strength of Cushing's mind.

The following original hymn by Rev. George D. Wildes D. D. of Riverdale, New York City, was then sung by the choir:

Around the gathered harvest sheaves,
The low autumnal sun
A wreath of golden glory weaves;
The toiler's meed is won!

Fitting, if late, the hour while here,
—Memorial of his fame—
'Mid scenes he loved, or green, or sere,
We speak one honored name.

For the full measure of his age
In grand historic years;
For gifts of strength, for counsel sage
'Mid battling hopes and fears;

For noblest word in high debate;
For patriot heart and hand;
For trusted skill when reeled the state,
In watch and ward to stand;

For these, thy gifts, all Giver! now,
—Honor and length of days—
Here in thy presence, Lord! we bow;
For these be thine the praise.

Mayor Currier, advancing to the front of the platform, then said:

Ladies and Gentlemen:— When a great man passes from this life to the life beyond, there is a recognized propriety and fitness in the public commemoration of his name and fame.

It is not, therefore, surprising that Newburyport should seek, in its official capacity, an occasion like this to give appropriate expression to the respect in which she holds one of her most illustrious citizens. As a scholar, statesman, lawyer, judge and diplomatist, he attained great distinction and renown. His acknowledged ability and wonderful intellectual energy added new lustre and importance to the public stations he was called to fill. Failing, perhaps, to attain the full measure of success that his capacity, extensive culture and vast acquirements merited, nevertheless his biographer depicting his life, at some future day, will find it closely interwoven with the political history of this Republic for the last half century.

It is indeed a matter of congratulation that his fellow citizens—neighbors and friends—have gathered here, from all the varied walks in life, to offer a testimonial to his greatness and appropriately acknowledge

the conspicuous public service which he has rendered to this city, state and nation.

We meet to hear the story of his life told by one competent and qualified to perform the task; to listen to words—wisely selected and fitly spoken—that portray the light and shade, the strength and weakness, of that busy life; to hear, from the lips of one who knew him well, the dispassionate verdict that history will repeat to future generations.

As the delineator of this sketch of the character and career of Caleb Cushing, drawn from a careful study of his life; as the faithful historian of this impressive occasion, I have the honor to introduce to you Hon. George B. Loring.

When the applause that greeted this announcement had subsided, Mr. Loring proceeded to deliver an appreciative eulogy, which occupied one hour and thirty-five minutes in its delivery, and was listened to throughout with earnest attention, and heartily applauded at its close.

EULOGY BY HON. GEORGE B. LORING.

Mr. Mayor, Ladies and Gentlemen:—A great and busy and restless life is ended. He who occupied here a conspicuous position as scholar, jurist, statesman, orator, author, diplomatist, legislator, magistrate, in all the varieties of public service, for two generations of men, is gone. The name which for more than half a century gave this his native town a high place among

the spots toward which the American people turned in every great crisis in all that time, is now withdrawn from the illustrious roll of active service, and is recorded in the pages of the history of the past. The record which a powerful intellect could make for itself and for the community out of which it sprang, is completed. A varied and remarkable career has terminated; and we have assembled here to pay a tribute of respect to the memory of him who contributed most liberally, during a long life, to the conflicting intellectual endeavor, by which the American people have wrought out thus far the great social and civil problem submitted to their hands.

It is now nearly four score years since Caleb Cushing was born into this community, and for nearly three score years he was the foremost representative man found in it, — so strong in all his faculties and characteristics that he seemed to mould it to himself. He inherited great powers from his ancestors, and he was surrounded in his childhood and youth by intense activity and energy in all the walks of life; but as he went on he set his seal on every force about him, and shaped society much more than society shaped him. So intimately connected with his birthplace was he, so attached was he to it, that even while pressed upon by a heavy weight of care, and loaded with the honors of most important official station, he sought here relief under disappointment, and brought his successes and honors hither as a tribute to a community which he never forgot, and on which

he could always rely for appreciation and support. He knew himself not as of Massachusetts or Essex county, not as of congress or the courts, but as Caleb Cushing of Newburyport, the home from which he received his intense sensibility and his great capacity, the home in which he was surrounded by great examples, and where his ambition first dawned and his career began. Whatever respect has been paid to his memory, therefore, whether by the highest judicial tribunal of this country or of this commonwealth, or by his fellow-citizens assembled where his greatest acts as jurist and statesman were accomplished, it is especially appropriate that this municipality should make official record of his large public service, and provide an enduring memorial of his name. For it should be remembered of him that he stands as a type of those active forces which gave this town and county a preeminent place in the history of the time when he advanced from childhood to youth, and entered upon the work which his predecessors had laid down. All about him he found great incentives to apply his vigorous powers to incessant toil. His father was an industrious, enterprising, successful merchant, filled with the resolute determination and earnest purpose of the old colonial clergy from whom he descended. There was hardly a spot, moreover, in this rising republic more distinguished for intellectual power in the beginning of this century than this where we are now assembled. The county of Essex had long been remarkable for the devotion of its leading men to the

cause of education, and its schools and well-endowed academies gave evidence on every hand of the devotion of its people to sound learning. Among the statesmen of that time, Tristram Dalton, a citizen of this town, the first and one of the ablest of the United States senators from Massachusetts, was engaged in his honorable public service. The name of Theophilus Parsons, the great lawyer of his time, the teacher of John Quincy Adams and Rufus King, the first and most distinguished chief-justice of Massachusetts, was familiar to old and young here, and the pious home of his father stood not far from this spot to remind that generation, as it does ours, of what the clergy of those days did for their country. Tyng and Dana were engaged in their high careers as theologians and divines. It was Master Walsh, the distinguished mathematician and author, who taught young Cushing the rudiments of that learning which became so profound and universal. John Lowell, also the son of a clergyman, the sound lawyer, first judge of the United States circuit court in Massachusetts appointed by Washington, the ancestor of lawyers and jurists whom this state has delighted to honor, of merchants who have laid the solid foundations of the wealth of our metropolis, of manufacturers who have established and built up vast industries here, of clergymen who have blessed, and one poet at least who has inspired our people,—John Lowell was honored and loved as a son of Newburyport. William Bartlet, the able and successful merchant and the generous

patron of letters, was in the midst of his prosperous career. And as time went on the solid legal attainments of Simon Greenleaf, and the defiant philanthropy of Garrison, illustrated the mental activity and vigor of the sons of this town. Among the great men of the county, Abbott and Stuart and Woods rose to the highest ranks as theologians; Story and Choate and Rantoul achieved the loftiest eminence in statesmanship and jurisprudence; Prescott among historians won a foremost place as a strong and graceful writer and a careful investigator, with a character beloved by all who knew him; in the realms of fiction Hawthorne explored the mysteries of the human heart with unequalled power and style unmatched; and Bowditch and Pierce took their stand with LeVerrier and LaPlace as expounders of the great mysteries of celestial and terrestrial mathematics. Born in a community of which these were the representative men, Caleb Cushing devoted his remarkable powers to the work of comprehending, at least, the eminence which each of these great minds had attained. With Stuart he could discuss the dogmas of theology. With Story he could enlarge upon the whole structure of jurisprudence. With Choate he could advance to the perfect work of a great lawyer and advocate. By the side of Rantoul he stood a powerful legislator and debater. With a profound and comprehensive knowledge of universal history, he was especially familiar with that chapter which Prescott unfolded with such fascina-

ting power. He rejoiced in all that the poet and novelist can do to beautify and gild this life, and reveal its secrets, with Hawthorne. I have heard him discuss physiology and embryology with the learning of a professor; and discourse upon ethnology as if he had devoted his whole life to the study of the races of men. From the time when at the age of seventeen he was graduated at Harvard and spent a year there as tutor, he stored his mind with every variety of knowledge, with an assiduity rarely equalled, and with such success that when he passed away he left the reputation of being one of the most learned linguists in our land: he had won the admiration of the most eminent chief justice of our day as a jurist: he was authority with every administration from Pierce's to Grant's on international law: he was recognized as an admirable classical and belles-lettres scholar: his speeches in legislative debate were learned and exhaustive: his occasional addresses were elequent and comprehensive; and his power as a writer led the literary world to regret deeply that he left behind him so few books, and such circumscribed authorship. Not endowed with creative faculties, or with vivid imagination, his mind possessed immense power of acquisition; and he filled his storehouse of knowledge with such infinite variety that he was often undecided where he should have been positive, speculative where he should have been practical, learned where he should have been wise, a comprehensive teacher when he should have been a sound

counsellor, obedient to argument where he should have been governed by an impulse. His life was devoted not so much to *unity* as *diversity* of thought, and throughout his entire career he subordinated all his faculties to the control of his mind, and turned for his own guidance to that great learning, which he not only used for his own purposes, but which he bestowed with liberal and lavish hand on all who desired to use it in the management of public affairs. It cannot be said of him that he was devoted to one idea, that he was a doctrinaire, an idealogist, a theorist in any sense. He fell upon an age when the work of preserving and constructing had just commenced, and as he entered public life he found his country engaged more earnestly in perfecting and developing a system of government already established than in changing or reforming it. The political period in which he turned his mind to political consideration is known in our history as the "Era of good feeling." And standing by the side of Webster and Clay in their tremendons antagonism to the powerful ruling party of that day, he found himself engaged in a contest for the adjustment of questions relating to the practical working of the government, and not for the support of a theory of state and society upon the establishment of which the storm of a revolution might burst upon the land. For this service his mind was especially qualified, both by nature and by education. He brought to the work the training of which I have spoken, an instinctive

love of all those principles of government which had been declared by the most earnest colonists, and which had formed at last the great object secured by the war of the Revolution. His youthful impulses were broad and liberal and humane. But what most strongly attracted his attention was that structure of government which had been wrought out by the framers of the constitution, and which was the finest embodiment of the doctrines of equality and justice in a civil system whose corner-stone was the wisdom of the law. He accepted the abstract views of the fathers of the republic as established beyond question or debate — but he turned his vast mental powers to the investigation of all matters incident to the working of that constitutional government which had been created by the strongest intellectual forces of that age which witnessed the birth of American nationality. Having set forth in this path he never abandoned it. He believed in popular right, in social and civil equality — but he still believed more strongly in that government which was founded on equality and right, and considering the foundation safe, he devoted himself to the perfection of the superstructure which had secured his respect and admiration. If he ever doubted the capacity of the people for self government, it was when they took into their own hands the interpretation of the constitution and the laws which he himself deemed entirely competent to secure every popular privilege, and the destruction of which involved the downfall of all popular government on

earth. As we examine his public life we shall find that this sentiment and this conviction never forsook him. Filled with proound respect for the fruit of one revolution, he started back with dismay at the contemplation of another. At all times ready to uphold the government, defiant of all opposition to his efforts for the aggrandizement of the republic, violently and perhaps unreasonably impatient of all opposition when the supremacy of the constitution was involved, he seemed to forget his early impulses and associations, to count the assertions and arguments of the past as nothing, to look upon no party tie as binding, and upon consistency, as usually understood, to be worthy of no consideration whatever.

HIS PUBLIC CAREER.

It was in 1825, while yet a youth of most attractive appearance, as we are told, with the ruddy glow of health upon his cheek, with features of peculiar beauty, with a voice "as musical as is Apollo's lute," with a manly and vigorous form, with stores of knowledge at his command, and with most persuasive phrase, that he entered upon his public career — a career which in one form or another he never abandoned. From that moment, when he entered the legislature of Massachusetts, with the exception of a few years spent in foreign travel, he trod steadily the path which then opened before him. A successful lawyer, and an able and eloquent advocate, he withdrew

somewhat from intimate association with the fraternity to which he belonged, and rose rapidly to a foremost position among the statesmen of his time. A scholar of great accomplishments, an author whose power as an essayist was already recognized, he left the walks of literature never to return. The great civil and governmental questions of the day, the popular issues, the struggle of politics, the excitement of debate, the storms of the forum, the association of those engaged in high affairs of state, seemed to possess an irresistible charm to his mind, and unending promise to his ambition. Constituted and trained as his mind was, he entered upon this service either too early or too late. Had he taken part in the formation of the constitution, his services would have been invaluable, and his name would have ranked high among those who founded and shaped our government. Had his career ended with the first era of constitutional interpretation, he would have reached the serene and lofty height of recognized power. Had his mind been turned in his youth to those questions of reform upon the solution of which the fate of our republic has hung, he would have gone on untrammeled by either the education or the association of the past. But plunged as he was into the controversies which were inevitable as one era—the era for which he was born—closed, and another era opened, his political career was uncertain, unequal and stormy —his motives were often misunderstood—his actions were often misrepresented. He reached high politi-

cal distinction, but not that height which most thoroughly satisfies. And while he achieved great success, he met with adverse shocks which would have destroyed the strength and quenched the courage of many an aspirant of less self-control and confidence. But through all the changes of fortune, there is found a certain mental tenacity, a certain directness of reasoning which must be admired even by those who have been embittered against him by political controversies and differences. At the close of President Lincoln's administration, when I was urging him to give his support to that great magistrate for a second term, and asked him if he did not recognize the skill and power he and his advisers had manifested in carrying on the war and establishing a financial system for the country, he replied that he did indeed, and, "So far as the financial system is concerned," said he, "I stood by Webster in advocacy of it nearly thirty years ago: of course I approve it." Turn to his opinion as Attorney General on foreign enlistments, and you will find that in 1855 he announced the doctrine upon which he won the Alabama claims — and that in advocating those claims he had only to turn back to the law which he laid down a quarter of a century before. When as Attorney General he declared in considering the Crampton controversy that an act of Parliament could not control the world, and that a government is responsible to other governments for defective legislation, he foreshadowed the American argument at

Geneva. As member of the committee on foreign affairs while in Congress he advocated continually those views which he afterwards applied in his mission to China, and still later as minister to Spain. He constantly urged upon the House, while a member, the importance of determined national assertion against all foreign powers, and of strong military organization to preserve the peace at home. Is it surprising then that he offered his services in the Mexican war, growing out of the addition of Texas to the territory of the United States, a war fought, as he believed, for the aggrandizement of his country; and that he sought an opportunity to risk his life for the Union, when the integrity of the government was threatened by civil war? He believed in the power of the Republic, as I have said: in her financial honor; in her future growth and prosperity; in the constitutional law which she had laid down and her great lawyers had expounded; in the importance of well-organized government for the welfare of mankind. Controlled by this sentiment, he paused not to consider the cause of difficulty and threatened danger — to remove the cause was his first desire, to remove the danger was his first impulse. And if he abandoned party for what he considered the cause of his whole country, and observed the precept of Plato, that they who rule the state should see that no part receives advantage to the neglect of the other — "*ut, quæcunque agunt totum corpus republicae curent, nedum partem aliquam tuentur, reliquas deserant;*" if

he resigned his early views, and broke up his later associations, from a conviction that discord and sedition are liable to follow that circumscribed patriotism which fails to consider the entire country — "*qui autem parti civium consulant, partem negligunt, rem perniciosissimam in civitatem inducunt, seditionem atque discordiam*," — why should he be condemned as inconsistent and inconstant? There are many here, I doubt not, who have not forgotten his eloquent words spoken here on his return from his four years' service as Attorney General of the United States under the administration of President Pierce. "It is said also," he exclaimed, "that other hypercritical persons impute to me tolerance for men of different shades of opinion regarding the political theories of the moment. Be it so. On the high road of public life are strewn broadcast the miserable fragments of party doctrines, shattered by overstrain, like the dead mules and broken down wagons in the track of an advancing or retreating army. Theorems of mathematical precision are good in books of geometry, but not in the conduct of great affairs. Men of action are the masters, not the slaves of doctrine. What the world needs, demands, and will have, is more practical statesmanship, and less of bigoted exclusiveness of doctrines."

It is by this standard that we must judge him. He could not be bound by party, for his advice was sought by conflicting administrations; his attainments were too valuable to be rejected even by those

who differed from him in opinion. His familiarity with the political movements of all the leading nations of the world, his knowledge of their rulers and their affairs, and his profound learning in international law, all eminently qualified him to be what he really was — the diplomatic counsellor of the country for a quarter of a century, when our foreign relations were complicated by war, and by the adjustments of peace. When profound knowledge as lawyer or linguist or statesman was required, he could respond readily and satisfactorily. And so at last he stood alone among the rival and contending parties of the day, finding ample service for his vast powers at the capital of the republic, and receiving from his own townsmen that support which they were always proud to give, and which was accurately described by one among you who said: "The fathers who first voted for him have passed; their sons have come and gone, and their grandchildren are now the actors; but they have all been the same to him."

HIS CONGRESSIONAL SERVICE.

In view of the unusual, peculiar, and remarkable public service of the great man whose career we have met to commemorate, I should be doing injustice to him and to you, his townsmen and friends, did I not consider somewhat elaborately and carefully his course in his great spheres of duty as legislator, jurist, and statesman. I have already referred to his

devotion to the system of government under which he lived, and to his constant desire for the power and aggrandizement of the republic as a member of the family of nations. So controlling was this sentiment with him that he felt, as if it were a personal insult, any reflection upon the civil organization of our land — upon the majesty of the government. He served this government with a sense of respect and allegiance, as a good servant serves a good master. He was scrupulously courteous to those who held official station—to the chief magistrate of the nation or the state, to the senator, to his representative in congress, because in his eye they stood for the government. No supercilious or contemptuous or even trifling, word ever fell from his lips, or was recorded by his pen, in reply to a popular call on him as a public servant. At home and abroad he was sensitive with regard to his country's honor; harsh and severe, perhaps, in dealing with those who differed from him as to where that honor lay. As a legislator he was always ready to contribute to the power of the state, and to defend those measures and doctrines which had their foundation in the spirit of American enterprise and American law. In this service he was never a partizan, even when recognizing his political obligations to the party which placed him in power. In his seat he was attentive, watchful, alert; in his committee room he was diligent, useful and constant. His presence was always welcome in the legislature of his native state, in which body he served honor-

ably and efficiently at various times, from 1825 to 1859. His congressional career commenced December 7th, 1835, in the first session of the twenty-fourth congress. His colleagues from the state of Massachusetts were Abbott Lawrence, Stephen C. Phillips, Levi Lincoln, George Grennell, George N. Briggs, William B. Calhoun, John Reed, John Quincy Adams, Samuel Hoar, and N. B. Borden — a distinguished delegation, in which he was the youngest and one of the most conspicuous members. He entered promptly and vigorously upon his work. He was placed upon the committee on foreign affairs, and distinguished himself for his able advocacy of a treaty with Mexico, fixing the boundary between that country and the United States. He sat in that body as a representative of Massachusetts institutions, Massachusetts doctrines, traditions, and faith. His first remarkable utterance there was for the right of petition, which was at that time assailed; and in a speech made January 25th, 1836, before he was even familiar with the system of the House, he made an appeal which illustrates most admirably the sentiments of his heart, the movements of his mind, and his manner of expression, at that early period of his life. "Men of Virginia," said he, "countrymen of Washington, of Patrick Henry, of Jefferson and of Madison, will you be true to your constitutional faith? Men of New York, will you ride over the principles of the democracy you profess? Men of the West, can you prove recreant to the spirit of independence

which carried you beyond the mountains? Men of New England, I hold you to the doctrines of liberty which you inherit from your Puritan forefathers, and if this House is to be scared by whatever influences from its duty to receive and hear the petitions of the people, then I shall send my voice beyond the walls of this capitol for redress. To the people, I say, your liberties are in danger; they whom you have chosen to be your representatives are untrue to their trust; come you to the rescue, for the vindication of your right of petition. To you I appeal, to you, the people who sent us here, whose agents we are, to whom we shall return to render a reckoning of our stewardship, and who are the true and only sovereigns in this republic."

Hear what he said on the Indian question, immediately after his defence of the right of petition, nearly half a century ago; and may our country listen now to the words then spoken by that young representative from Massachusetts — words now venerable with years and coming from his honored grave. "Every consideration of policy," said he, "calls upon us to conciliate, if we may, the Indians within our jurisdiction. * * * Dictates of duty in this matter are not less imperative than arguments of policy. The Indians are in our hands. They have been sunk to what they are, if not by us, yet through us. We have assumed the guardianship of them, and have pledged ourselves by stipulation after stipulation to watch over their welfare. I invoke the

faith of treaties. I appeal to the honor of the nation. I demand of its truth and justice, if there be any sense of right in civilized communities, that we act decidedly and promptly in the execution of some well-digested plan for the benefit of the Indians subject to our authority. Let us not speak to them only as conquerors and in the language of relentless rigor, but to the vigor that shall overawe and control, conjoin the justice that shall command respect, and the clemency that shall conciliate affection."

Called upon soon after to discuss the questions of banking and the currency, he uttered views which are so appropriate to these times that I record them here as if it were his living voice speaking to us in this hour of our financial trial. After enlarging on the danger of paper money, and the impossibility of a purely metallic currency, and declaring that "Bank paper convertible into specie on demand is the medium between excessive gold currency on the one hand and mere paper money on the other," he said, "It would carry me too far to go into an examination of the relations that banks hold to the business of the community. The fact is apparent. If you couple this with what I have proved of their composition and ownership, I think you will perceive that you cannot overthrow the bank corporations of the states without disturbing pretty effectually the whole community. They are inwrought with its entire fabric. It is this circumstance, and not the power of banks, which has occasioned the suspension of specie pay-

ments, to take place throughout the land, from one end of it to the other, without any conflict or collision between the banks and the people. By destroying the banks, then, you will revolutionize the property of the country; not that of the rich only or chiefly, but that of the farmer, the mariner, the mechanic, the manufacturer; and in revolutionizing the property of all these you revolutionize society. Such an upheaving of society from top to bottom may be very convenient to the idle and the bad, the needy adventurers who would like to have all the good things of this world thrown into common stock for a general scramble every Saturday night, because they are either above or beneath a life of labor. But how would it suit the virtuous and frugal, who compose the great body of the people of this country, and who see themselves gradually rising into competency and respectability by means of honest industry and enterprise?"

To these views he faithfully adhered in succeeding congresses, and on May 21st, 1840, in opposing the Independent Treasury bill, he charged upon it that it was a deliberate attempt to "unbank the banks;" a scheme to create "bank princes," instead of corporations; an effort to engraft the moneyed institutions of the old monarchical world upon our own, to increase executive patronage, and to open the way to fraud and peculation. He foreshadowed that financial policy which enabled us to conduct an expensive and

exhausting war, and to sustain our credit in time of peace.

On the 19th of April, 1838, he spoke for the encouragement of the then rapidly growing West, and indicated his patriotic desire to carry our institutions into the entire territory subject to our jurisdiction. In discussing the Cumberland road bill, at that time, and supporting it on the ground that as a great landholder the United States have the same power which any private landholder has to make school reservations and road reservations, and to contribute to local improvements, thus augmenting the value of the land and promoting sale and settlement, he said, "Sir, it may be, it must be that the relative political consequence of the Atlantic States will be diminished by the prosperity of the West. Be it so. It is the natural result of the development of the resources of the country, foreseen by the fathers and admitted by them as it should be by us — to raise up rich and populous states beyond the mountains, dividing with us the national power. But I cannot suffer myself to regard this question in the limited view of mere sectional interests. It involves the greater good of the whole nation, the good of the human race. The surplus population of the Atlantic states will continue as it has done, to sow itself broadcast over the valley of the Mississippi. Are they not still our own posterity, our brothers, our blood, and Americans like ourselves? I rejoice in the spectacle of the Anglo-

American stock extending itself into the heart of the continent, taking the place of the wild beasts and roaming savages of the far West, advancing with, as it were, a preordination of inevitable progress, like the sun moving westerly in the heavens, or the ascending tide on the seashore; or in the striking language of a foreign traveller, as a deluge of civilized men rising unabatedly and driven onward by the hand of God. I rejoice to see growing up in the West a prosperous and cultivated community, daughter of the East — *Mater pulchræ filia pulchrior*. If, as may well happen, the expanding states of the West be fated to reach the remote shores of the Pacific itself, I desire to see them carry along with them the laws, education, and social improvement which belong to the older states, so as to combine distant peoples by the ties of mutual good will and beneficial intercourse, as well as of blood, thus overcoming the obstacles of time and space, and worthily fulfilling the great destiny reserved for this exemplar American Republic." As I look back and remember that forty years ago this was prophecy, and that in that time the population of the United States has more than doubled, that fifteen states have been added to the Union, that the civilization of the East has really reached the Pacific shores to rival the Atlantic slopes in all the arts and enterprises of life, and that the remotest regions of our country are bound together not by a common destiny and common blood alone, but by the most immediate and rapid communi-

cation — a growth which seems fabulous to us who have seen it — I cannot admire too much the youthful prophetic statesman who predicted the astonishing result and prepared the minds of his countrymen to realize and provide for it. On June 13th, 1838, with his mind still filled with visions of the rising greatness of his country, and comprehending the popular demands and necessities of a growing republic, he made a strong and eloquent speech in favor of granting Preemption Rights, warning the country against the irregularities and controversies attending the management and sale of the lands by the government, and against the sectional rivalries which must spring from their distribution, and claiming for the actual settlers, for those hardy men who were to build up the empire he had predicted, for those who were to convert the wilderness into fertile fields and make it the abode of civilization and freedom, every encouragement the government could bestow by opening the lands to their occupation and use.

Starting forth with these enlarged views of the policy which the government should pursue on all the important questions to which I have referred, he was ready at all times to uphold the honor of that government, and to lift up his voice in behalf of all means by which the people could be informed and elevated. In a heated debate on the treasury note question in March, 1840, he declared that "he was not disposed to withhold from the government the means proper

and necessary to carry on its operations, but he would hold the administration responsible for the disbursement of such means as were placed at its disposal for that purpose"—recognizing his patriotic duty to his country, even while opposing the party in power to the extent of predicting a change of administration and congratulating the country on it. At all times he urged liberal and progressive measures on the House, and warned his associates there against opposing the advancing spirit of the American people. He protested against the famous Atherton resolutions, as a violation of those rights which an American holds most dear. He urged repeatedly the doctrine that a treasury note was as much a loan as a bond with a specified rate of interest, and should be issued in the form of a draft on specie or other means in the possession of the government at the time it is emitted.

Thus far Caleb Cushing had, as a Whig member of congress from Massachusetts, found himself in a minority in the house. But the election of 1840 had taken place, the most sweeping political revolution ever known in this country, and on February 12th, 1841, he was appointed on a committee of the House to notify General Harrison of his election as President of the United States. His party was now in power in every branch of the government, and he stood before the country with the brilliant congressional record I have just delineated, and with a reputation as a debater, an orator, a wise, enlightened, far-

seeing, liberal statesman, rarely equalled in this country.

THE ADMINISTRATION OF JOHN TYLER.

On the 4th of March, 1841, the new administration came into power, and President Harrison, having placed himself squarely in his inaugural upon the doctrines of tariff and finance advocated in congress and out of it, by the leaders of the Whig party, now triumphant, selected a cabinet so distinguished and able that the country had a right to expect the soundest and wisest policy. At this distance of time how illustrious the group appears! Daniel Webster, Thomas Ewing, John Bell, George E. Badger, Francis Granger, and John J. Crittenden, statesmen all, experienced, wise, patriotic, powerful advocates of the policy of their party, and at the same time large-minded and large-hearted defenders of the best interests of the republic. On the 4th of April the President passed away, an old man, crushed by the weight of public cares suddenly imposed, and bewildered by a blinding storm of eagerness and impetuosity which broke over the capitol. The duties of the Presidential office devolved upon John Tyler, the Vice President, and one of the most extraordinary chapters in the history of American politics commenced. The cabinet of President Harrison, on invitation of President Tyler, retained their position, and the extra session of Congress, called before the

death of the President, convened on May 31st. The bold and imperious leadership assumed by Mr. Clay in the Senate at once attracted the attention of the entire country, and evidently annoyed many of the younger leaders of his own party. His programme of the business of the extra session: 1, The repeal of the sub-teasury; 2, The incorporation of a national bank; 3, The provision of an adequate revenue, and a temporary loan; and 4, The distribution of the proceeds of the public lands — was put forth with all the imperiousness which marked the great Kentuckian, and gave rise to the statement that "Mr. Tyler had delivered a message; Mr. Clay virtually delivered another." The irritation had commenced which ended in an explosion; and even before there was any declared difference of opinion between the President and his party in Congress, Mr. Cushing took occasion to say in the House that he recognized no administration but that of John Tyler. It was upon the "Bill to incorporate the subscribers to the Fiscal Bank of the United States," the great measure of the session, the great object of the Whig party, the act which Mr. Clay had especially at heart, that the explosion came. After long conference with the secretary of the treasury, Mr. Ewing, and many ingenious attempts to accommodate the well-known views of the President, and to conciliate the anti-bank men of the dominant party, the bill passed the two branches of Congress and was submitted to the President. In his veto message, with which he returned the bill to

the body in which it originated, the President repeated his early opinions against the constitutionality of the bank, and declared that it would be a crime and an infamy in him to sign the bill which had been presented to him. Mr. Clay attacked the message with great severity, declaring that the President was bound to preserve his self-respect, by being obedient to the party which elected him, or by resigning the presidency if obedience was impossible. Mr. Rives of Virginia warmly defended the President, and was charged by Mr. Clay with lodging in the "half-way house," the pet-bank system, in his transition from the democratic to the whig camp — with being a member of an inner circle of administration advisers — with attempting to organize a third party, and to surround the President with a secret cabal; Mr. Rives significantly reminding the senator from Kentucky in reply, that there were also rumors of a dictatorship at the capitol, "fraught with far more danger to the regular and salutary action of our balanced constitution, and to the liberties of the people, than any secret cabal that ever has existed or ever will exist." The senate failed to pass the bill over the veto, and a rupture began which was never healed. A second bill for a fiscal agent, called a fiscal corporation, met with no better fate at the hands of the President — and the rupture was complete. On the 11th of September the members of the Cabinet, with the exception of Mr. Webster, resigned, and a cabinet composed of Whigs with democratic proclivities, and

Democrats with whig proclivities, was appointed in their places. The Whig members of Congress rose up in their wrath, met in council and issued an address to the people of the United States, charging the President with a desire to create new political combinations, with having wrested from the Whig party "one of the best fruits of a long and painful struggle, and the consummation of a glorious victory," and with having sent it into the field of political strife, "stripped of the arms which success had placed in its hands."

It was at this point that Mr. Cushing took his stand, and following the lead of Mr. Webster, issued a counter manifesto, justifying the President for changing his course on the Fiscal Corporation Bill, and declaring that he still adhered to the party which placed him in power. In this manifesto he denounced the "caucus dictatorship" which had been set up in congress; warned Mr. Clay that in attacking the President he would beat out his own brains and those of his party against a wall of his own construction; appealed to the Whig party not to "throw away the actuality of power for the current four years" for "some contingent possibility four years hence"; reminded his associates that a division in the Whig party would insure a democratic succession; declared that the President, in refusing to sign the bank bills, had "violated no engagement, and committed no act of perfidy in the sense of a forfeited pledge;" demanded for him the right to exercise his own con-

science in discharging the duties of his office; commended Mr. Webster for remaining in the cabinet when "all the rest had fled;" and attacked the address of the Whig party "as the work of Mr. Clay — as an emanation of that caucus dictatorship in Congress of which he was always the embodied idea."

This remarkable session of congress, which commenced on the 31st of May, ended on the 13th of September. Of its acts little now remains besides the effects of its controversies upon the political history of the country. The leaders of the Whig party were disappointed by their failure to preserve that Whig "unity" by which they hoped to impress their views upon the policy of the government; the President was disappointed by his failure to found a third party; and the people were disappointed by the failure of those whom they had placed in power to fulfil the promises of a great campaign and a brilliant victory.

During the stormy session which I have described, Mr. Cushing found time, amidst the political contests in which he was engaged, to consider all the important questions which came before the House. He earnestly advocated the Twelve Million Loan bill, to supply an exhausted treasury. He supported the establishment of a mission to Sardinia, on the ground that the United States should hold diplomatic intercourse with all civilized nations. The destruction of the property and life of citizens of the United States on the soil of New York by British subjects, and the outrage on the steamer Caroline, in 1838, had been a

matter of active negotiation between our government and that of Great Britain. The administration of President Tyler assumed that "the territory of the United States must be regarded as sacredly secured against all such invasions;" and "this government can never concede to any foreign government the power, except in a case of most urgent and extreme necessity, of invading its territory." This policy was ably supported by Mr. John Quincy Adams and Mr. Cushing, the latter of whom, in debate in the House, June 24th, 1841, said: "I will not detain the House with any further discussion of these questions. This only I add, in conclusion, that if all or either of the points in controversy between us and Great Britain should end in war, I count with implicit confidence upon the patriotism of the government in all its parts, of both Houses of Congress, and every member of it, and on that of the whole people of the United States, to unite in carrying us triumphantly through it; to rally as one man under the broad banner of the Union, and never to yield until the entire continent is redeemed from foreign power and foreign influence, and the republican government shall be made to become the common blessing of the whole North America, from the gulf of Mexico to the farthest shores of the Arctic seas."

In the same spirit he appealed for the liberal support of the army in the second session of this same congress, insisting that it was not only wrong in itself to cripple the government by an inadequate army

appropriation bill, but that it was wasteful economy in the end; and he protested against humbling the nation before foreign governments by reducing the army, declaring that of all policy to reduce the army and navy he washed his hands.

In this session he stood by President Tyler still, and supported the President's veto of the bill to extend for a limited period the present laws for laying and collecting duties on imports—assuming with Jefferson that the executive, and congress with its two houses, constitute the "three branches of the legislature," and agreeing wtth Mr. Everett, who speaks of the President as "the co-ordinate department of the National Legislature."

In the third session of the 27th congress he opposed the repeal of the bankrupt act, passed at the first session, on the ground that it was a vacillating policy, and injurious to the business of the country; and he advocated the refunding of General Jackson's fine.

With this session his congressional career ended. That his course during his congressional life of eight years had been patriotic, and national, and high-toned so far as the advocacy of questions brought before him is concerned, no one can deny. He at all times supported a humane and progressive policy at home, and a manly and defiant policy towards foreign powers. How far he was controlled in all things by political wisdom, I leave for others to judge. When he retired from the national legislature he was in full

accord with the President, who was elected by the great party, of which he was a conspicuous and powerful member; but the President was at open war with that party. So far as his political affiliations were concerned, Mr. Cushing during the remainder of his long life acted with the Democratic party when he took active part in any political organization — although in many instances he stood aloof, bound by no party ties whatever. From this time he attained no official position by the suffrage of the people — except as mayor of this his native city, and as a representative to the General Court of Massachusetts from this community, which always felt proud to place their interests and the expression of their views in his powerful hands.

THE MEXICAN WAR.

His public service now became of another sort; and it was mainly in the business of interpreting and applying our laws at home and abroad that he was engaged. But before proceeding to discuss this service, it is due to his comrades in the Mexican war to refer to his connection with them in that contest which ended in a large acquisition of valuable territory to the United States, and which first taught foreign powers to respect our warlike capacity as a people. California and New Mexico have become integral parts of the republic — an incalculable addition to our wealth and to the extent of our power and civilization on this continent. The genius displayed by Scott and Taylor on the battle-fields of Mexico

won the respect and admiration of the great commanders of the old world. In reviewing the congressional career of Mr. Cushing, it is easy to see how his sympathies were enlisted in a cause in which the honor of his country seemed to him to be involved, a cause which was accepted by his new political associates, a cause in which that army which he had so often defended on the floor of the House was employed. There have been many instances of the energetic devotion of the public men of Massachusetts to the work in which they were engaged—but seldom has more resolution been displayed than your distinguished townsman manifested, when the legislature of Massachusetts having failed to provide for the equipment of a regiment of volunteers for the war, he furnished the requisite sum from his own means. Leading his regiment to the Rio Grande, he was attached to the army under the command of General Taylor, and soon after received the appointment of brigadier-general. He also served on the board of enquiry for the investigation of charges against Generals Scott, Pillow and Worth.

THE TREATY WITH CHINA.

But it was as diplomatist and jurist that he won his chiefest distinction after his retirement from congress. On the 16th of December, 1840, John Quincy Adams called up a resolution in the house asking for information regarding our relations with China, and complaining that when the American consul present-

ed a memorial of the American citizens of Canton he was directed by the authorities there to place the name of the Emperor two inches higher than the name of the President. Mr. Adams desired that such distinctions should cease—and that the two officers should be treated with equal respect. In this discussion he was warmly and earnestly supported by Mr. Cushing in an argument filled with knowledge of the economy and policy of the Celestial Empire. In the following summer he was appointed commissioner to China to negotiate a treaty between that country and the United States. He entered upon the work assigned him with his usual energy and system. The government to which he was accredited was a sealed volume to all other nationalities; the Mantchoo language seemed by its intricacies to constitute an impassible barrier between itself and every other tongue; the Chinese character was a mystery; Chinese manners and customs and wants presented an incomprehensible and perhaps repulsive problem, made venerable and unapproachable by an antiquity of thousands of years. Negotiations with the Empire had been peculiarly unsuccessful. But the mind of Mr. Cushing found most satisfactory work in arranging the business before him. He sought counsel and advice of Dr. Parker, long an American resident there, whose skill as a physician had won for him a high reputation, and whose keen and diligent study and observation had given him most intimate and exact information of the difficulties surrounding all

commercial intercourse with the Chinese merchant and government, and the best methods of protecting the lives and property of our citizens in Chinese ports, and of securing some form of respect for our system of education and our forms of religion. The venerable physician, now withdrawn from public life and enjoying his well-earned home at the national capital, refers still with unabated admiration to the readiness with which the American Commissioner received his suggestions, and to the untiring zeal with which he entered upon his work in China, where they were associated during the entire continuance of the mission. The courtesy, and dignity, and patience, and keenness, and readiness, and anxiety of Mr. Cushing to learn everything which would enable him to perform his work well, were especially attractive to all who were associated with him in the service. Accepting the suggestions made by Dr. Parker, and submitting them to the State department, he may be said to have provided himself with the best instructions which could possibly be obtained. He was directed by Mr. Webster to enlarge the commercial relations between China and the United States as rapidly as possible, to cultivate the friendly dispositions of the government and the people, to assure the Chinese government that the commercial regulations of the Empire would be respected, and that the intercourse between the heads of the two great governments "should be made to embrace only grave political questions, the tender of mutual regard, and the establishment of useful

relations." He was instructed to obtain an audience with the Emperor, and to insist on this courtesy as an act which the President of the United States had a right to claim, at the same time "he was to avoid the giving of offence and the wounding of the national pride." He was ordered to enlarge upon the extent of the territory of the United States, "their great commerce spread over all seas, their powerful navy everywhere giving protection to that commerce, and the numerous schools and institutions established in them to teach men knowledge and wisdom." He was urged to conclude a treaty between United States and China as favorable in all its terms as that existing between that Empire and Great Britain.

These instructions were more than fulfilled by the terms of the treaty, which was signed July 3d, 1844. By this treaty objects of contraband and monopoly became a matter of stipulation between the two governments, and were not left to the Emperer alone. New provision was made for trade from port to port. The personal dignity of consuls was protected. Citizens of the United States were allowed to erect houses, magazines, churches, cemeteries and hospitals in each of the five ports. Provision was made for the employment of natives to teach the language of the Empire; and the purchase of books was legalized. The vessels of the United States were allowed to come and go between the ports of China. Direct communication with the court of China was provided for,—the first time in her history.

Whatever may have been done since the negotiation of the Cushing treaty with China, however wisely and widely Mr. Burlingame may have served the interests of both nations by his skillful offices and management, it cannot be denied that to this first opening negotiation we owe entirely the establishment of such relations as rendered further intercourse possible. It was the first bond which bound the East and West together, and it accomplished more for the United States than the arms of Great Britain had yet accomplished for that great commercial power. For China, it taught her there was a Christian nation which believed more in the results of peaceful arbitration than in the power of the sword. Mr. Cushing returned to this country in 1845 laden with knowledge of the language and institutions of the East.

THE TRENT AFFAIR.

The unexpected and anomalous difficulties which arose between the United States and Great Britain during the civil war, called for the exercise of great sagacity, profound knowledge of international law, and accurate judgment with regard to what would be possible and what impossible in negotiation. In the Trent affair, and in the matter of Confederate cruisers, the course pursued by the British government excited alarm and astonishment in the minds of all who desired the success of the Union arms. And the opinion of a profound international lawyer and an experienced diplomatist like Mr. Cushing was consid-

ered of great value by all who were called upon to sit in judgment upon these questions, and by all whose interest and whose regard for the republic gave importance and significance to the decision. Fortunately we have Mr. Cushing's opinion of the seizure of Mason and Slidell, in an elaborate letter addressed by him to the Hon. Fernando Wood, Dec. 6th, 1861. You who have listened to his views expressed while a member of the House, on the prospective power of the republic, on the importance of supporting liberally the army and navy, and on the McLeod matter, will not be surprised at the stern and defiant and uncompromising manner in which he proposed to hold England responsible for her acts under the international law as interpreted by herself. It is curious and interesting to see how the diplomacy of the administration tended one way, and the opinion of a great American lawyer, warmed by impulse and free from responsibility, pointed another. In this remarkable letter he says: "I think we, in the United States, are over-sensitive regarding foreign commentaries on our government, and on its acts and ours; it would better become us to stand steady before the world in the calm self-possession and conscious strength of a great people."

"Mason and Slidell," he wrote, "are subjects to be dealt with as prisoners of war, or they may be proceeded against for treason; but they could not be dealt with by us in either of these capacities while they were on board the Trent. We

are to find a reason for their personal arrest while there. We have that sufficient reason, I think, in the fact that they were diplomatic ministers of the government of the insurgent states, commissioned as such, and, as such, destined for Great Britain and France." He goes on to say that "the best modern writers of positive law accept and carry out the general doctrines of Lord Stowell to all its legitimate consequences, which if not justifying the stoppage of enemy ambassadors universally, do, at any rate, distinctly justify the arrest *in itinere* of the unarrived, and of course unrecognized enemy ambassadors, and still more the unrecognized ambassadors of an unrecognized insurgent government." Further on he adds, "To aid the insurgents to establish their independence would be on the part of a neutral nation, an act of intervention in war, which act, whether it were the supply of arms or of soldiers, or of pecuniary subsidies, or of the transmission of these, or the facilitating such supply or transmission, or the negotiating for them or providing the means of negotiation, would constitute a breach of neutrality as respects the legitimate government. Now the transportation of insurgent ambassadors not only comprehends within it the Contraband Act of transporting despatches, but comprehends also the entire quesntio of indirect military aid to the insurgents in all its possible relations, together with the entire question of political aid." "To conclude then," he says, "the act of Captain Wilkes

was one which any and every self-respecting nation must and would have done, by its own sovereign right and power, regardless of consequences. At the same time it was an act justified by the principles and doctrines of international jurisprudence."

No man can read this opinion of the great international lawyer, in these days of the prosperity and power of the Republic, without being impressed with the soundness of the law, and the unyielding spirit which even in adversity insisted on asserting a doctrine to which the popular heart warmly responded, but which diplomatic necessity felt obliged to set aside.

THE ALABAMA CLAIMS.

This spirit of defiant assertion for the government also manifested itself in the last great act of his life, perhaps the greatest of all, as one of the counsel of United States in the matter submitted by the treaty between this government and Her Britannic Majesty, signed in Washington on the 8th day of May, 1871, to the tribunal of arbitration called to meet in Geneva. In this work Mr. Cushing evinced a depth of knowledge, an accurate power of detail, a patience in research, a readiness to labor, a zeal for justice and right, which astonished and delighted all who were associated with him. In his argument before the arbitrators at Geneva, to whom the two governments had referred the question of damages arising from Confederate cruisers, fitted out in British ports

during the civil war, known as the "Alabama claims," he was earnest, sometimes impetuous, always clear, logical and profound. He was there as counsel for the American government, and standing upon the doctrine laid down by himself as Attorney General in 1855, on the question of foreign enlistments, to which I have already alluded, that a government is unquestionably responsible to other governments for defective local legislation, and for insufficient care in observing and enforcing all its obligations, he really announced the opinion which won the Alabama claims. He contended most earnestly for compensation for all damages direct and indirect. He learned from the Secretary of State, Mr. Fish, that it was "with unfeigned surprise and sincere regret that the President had received the intimation conveyed in Earl Granville's note, that Her Majesty's government held that it is not within the province of the tribunal of arbitration to decide upon certain claims for indirect losses and injuries;" and that they were "necessarily to be taken into equitable consideration in a final settlement of all differences between the two countries." He knew that as early as the 20th of May, 1865, Mr. Adams stated distinctly in a communication to Lord Russell, "that in addition to this direct injury, the action of these British-built, manned and armed vessels has had the indirect effect of driving from the sea a large portion of the commercial marine of the United States, and that injuries thus received are of so grave a nature as in reason and

justice to constitute a valid claim for reparation and indemnification." He knew that when Sir Edward Thornton demanded of Secretary Fish, "that the United States Government should formally acknowledge that the indirect claims were not within the scope of the arbitration," the reply of the Secretary was that this was impossible, "because they had been presented to the tribunal under the firm conviction that they were included in the treaty." With that tenacity of purpose which governed him in all his public service, he insisted in his concluding chapter of the argument of the American council, that enhanced rates of insurance, the transfer of United States commerce to the British flag, the prolongation of the war of the Rebellion, constituted a weight of injury which should not be lost sight of in the arbitration. To support this view he boldly directed his portion of the argument; and joining his masterly powers to those of his associates, Mr. Evarts and Mr. Wait, he rendered his country invaluable service, by taking a high stand for the honor of our government and for such assertion of international dealings as would give the United States a precedent for the loftiest demands when she might have reached the height of her power and strength.

He was appointed council for our government some weeks in advance of his associates, and had made valuable suggestions to Mr. Bancroft Davis, the able and accomplished agent of the United States, to whom the country owes a debt of gratitude for his careful

and complete presentation of the American "case" to the arbitrators. Before the arrival of his associate counsel in Europe the case as it now stands was printed; and when the arbitration opened, the counsel were occupied in Paris preparing their work, Mr. Cushing reaching there on the 10th of February 1872, and bringing with him a mass of matter which had been collected in Washington under his supervision, and which was afterwards appended to the counter case, which was also prepared by Mr. Davis. Having proceeded to Geneva to unite with Mr. Davis in putting in the counter case and the accompanying documents, he returned to Paris for the preparation of the argument, and took apartments in the American quarter near the Arc de Triomphe. The argument was practically written and printed in English and translated and printed in French in thirty days. Of this work Mr. Cushing did his full share, and advanced as he now was in years, he was at the close as vigorous and bouyant and sympathetic as ever. During the fortnight of negotiations which followed the putting in of the American argument, and preceded the putting in of the British argument, he was a sagacious counsellor, upon whose judgment his associates felt they could always rely in solving questions that belonged to the statesman more than to the lawyer.

Of the American argument which controlled the arbitrators in their decision, there were thirteen chapters, whose authorship was, as near as I can ascertain, as follows, viz: Chapters 1 and 2 were written by Mr.

Evarts; Chapters 3 and 4, by Mr Cushing; Chapter 5 by Mr. Bancroft Davis; Chapters 6, 7, 8, 9 and 10, by Mr. Wait; Chapters 11 and 12, by Mr. Evarts; and Chapter 13, by Mr. Cushing, excepting the second subdivision which was by Mr. Davis.

Of the argument of Mr. Cushing in reply to the special argument of Sir Roundell Palmer, we are informed in the published report, that "this argument was written and presented in the French text as shown in the note;"— an illustration of the author's accomplishments as a scholar and linguist.

In the midst of all this work, of whose daily elaborate discussions and consultations it is impossible to give an adequate idea, and the toilsome preparation of which the record gives no notion, Mr. Cushing took his lodgings at some distance from the hotels of Geneva, on the south side of the lake, where he could do the work assigned him free from intrusion. He found time to make himself acquainted with Geneva, its history, its local antiquities, and the personality of those who were prominent in the city during his sojourn there. He also studied the points of interest throughout the whole borders of the lake so thoroughly that he was not only an agreeable companion but an accomplished guide to his associates in their drives and excursions. In the conduct of business inside the court, it was universally conceded that his dignified bearing, his great learning, his experience and his affability, produced an impression in the highest degree favorable to our cause. And it is

affectionately said of him by those most intimately connected with him on this great occasion, that he was a counsellor to whom they could go with confidence, and a friend whom they could implicitly trust.

I have in connection with Mr. Cushing's arguments on the Alabama claims, as elsewhere, spoken of the tenacity of his mind in adhering to what he considered his mature and well-defined principles of law and conduct, notwithstanding the apparent inconsistency of his political life. This characteristic of his, and his sturdy demand for fair dealing in argument are also illustrated in his well-known "History of the Treaty of Washington." In the pages of this remarkable volume he presses still his views of the claim for "indirect damages," which he designates, with his usual comprehension of the interests of his country, *national damages*, and exposes with a keen sense of honor the successful attempt of Lord Chief-Justice Cockburn, the British arbitrator, to insert a partizan political document into an opinion which should have been a purely judicial statement. In this as in all his course upon matters growing out of the treaty of Washington, he displayed the direct and steady and forcible operation of his mind, his deep regard for the honor of his country, and his high appreciation of the fairness and dignity demanded by lofty official position. There may have been moments when he was controlled by partizan views, but not upon the bench, not in his opinions as a lawyer, not in his service as a diplomatist.

The remaining act of Mr. Cushing's diplomatic life was performed by him as minister to Spain, in which he maintained his high reputation as a wise and faithful public servant.

HIS CAREER AS A LAWYER AND JURIST.

Of Mr. Cushing as a lawyer and jurist, a just and appreciative word has already been spoken by his brethren of the Essex bar. The practice of his profession was far too short to develop his capacity as an an advocate, but long enough to indicate his wonderful power of grasping the principles of the law and of arranging and retaining them in his mind. Elevated to a seat on the Supreme bench of Massachusetts in 1852, after long absence from the courts, he brought his great storehouse of general legal knowledge into such such successful operation, that his opinions rank high among those pronounced by the court, at a time when it held a foremost place among the judicial tribunals of the country, and when its great chief justice earned the reputation of having "made more law than any other man in the republic," as I once heard Mr. Cushing say on introducing him to one of the distinguished lawyers of another state. He was a brilliant, faithful, able judge, filled with a sense of his obligations and thoroughly conscientious in the discharge of his duty. Of him said Chief Justice Shaw, "When he came upon the bench we did not know what to do with him; when he left we did not know what to do without him."

As Attorney General of the United States, a position to which he was called by President Pierce in 1853, he proved himself most efficient as the law officer of the administration, and did much to enlarge and define the duties of that department of the government. His opinion on foreign enlistments has become the guiding law of the land to which other nations are held strictly accountable. His opinion upon the question of indemnity by the government for the use of Morton's patent for anæsthesia in surgical operations, is still admired as a sound and clear statement of patent law and as a charming essay upon scientific discovery and mechanical invention. He defined the duties of the Attorney General and the relation of his office to the Federal Government, in a way which has since his day been observed, and he put a stop to the custom of his predecessors of pursuing their private business in office and court, while in the employ of the government. He laid down the duties of congress under the constitution, and furnished three important volumes of the thirteen, containing the opinions given by his department since the foundation of the republic.

CONCLUSION.

That the mind of Mr. Cushing, which grasped with so much readiness and force questions of public policy, should have made a conspicuous and brilliant mark in the field of general literature, is not surprising. As an orator on all public occasions, as a

writer of essays for the reviews of the day, as the author of the history of his native town, of a record of his early travels in Spain, of a treatise on the Treaty of Washington, as a speaker in political campaigns, as a popular lecturer he won a high reputation. His style as a writer was somewhat overwrought and florid — more so by far than was necessary considering the amount of information and the depth of thought which it conveyed — but it always commanded the attention of the reader, and bore the marks of careful study and a cultivated taste. As an orator he was powerful and impressive, in gesture not so remarkable for grace as force, in voice as captivating as a well-toned organ. Before me lies a long list of orations, speeches, addresses, lectures, essays, extending from 1824 to 1875, more than half a century, during which his country advanced from childhood to manhood, and passed from a doubtful to a positive, well-defined, aggressive, powerful nationality. In all these years his name appears as the careful student of public affairs, the devoted and accomplished scholar, the profound thinker, the close observer, ready at all times to express his views in public, and sometimes overladen and confused by his wealth of knowledge in discussing the men and measures of his time. His library which he left behind him — a mute instructor upon his modes of thought and study, contains the works of every great writer on international law and maritime law, from Vattel to McCulloch, in all civilized tongues, the best

editions of Greek and Latin classics, histories, ancient and modern, of Spain, and later histories of all Spanish provinces and South American states, Chinese volumes of every description, bearing upon the history, manners, customs, and literature of that remarkable people, hundreds of French and Spanish novels — all pointing to the versatility of his mind, its modes of relaxation, and to his deep interest in all the methods of state and society by which civilized man organizes his government, and provides for his place in the family of nations — all indicating his training for practical statesmanship, and the manner in which abstractions somewhat unfitted his mind for practical politics.

I have refrained from discussing the misfortunes and disappointments which fell upon your great townsman during his long and busy life—disappointments and misfortunes which he sacredly laid away with his sorrows in the secret chambers of his heart, where he treasured them in silence—for they belong to the past, and are not to be counted in the high career which we have met to commemorate to-day. Perhaps he was not wise as this world counts wisdom, but he was loyal, honorable and honest in his dealings with his follow-men—just and generous in his estimate of their motives and capacity. He preferred to follow a friend rather than lead an enemy. His sensibility was so great that it was easier for him to appeal to his pride to endure and suffer silently a wrong, than it was to summon his courage to resent it.

Before his fellow men he stood in an attitude of loneliness and solitude, while his obedience to his personal friends, his devotion to their personal interest, his dependence on their counsels, revealed a deep and hidden sentiment, which his nature and his experience with mankind led him to conceal in his profoundest depths. Less and less as time went on did he seek the companionship of men; but he drew closer and closer to his native town; he turned with warmer longing to his home; he became gentler among his friends, more attractive in his intercourse, keener in his enjoyment of every manifestation of the good qualities of the mind and heart in young and old. In this ancient place he found his peace—here among the memories of the past, the shadows of familar faces, the charms of the landscape, the river, the sea, upon which his eye rested in his childhood—here where he was known as your illustrious son—here where he always found sympathetic silence for his disappointments and "joy for his fortune." And so here, as I have already said, a long life, not I think thoroughly understood, not thoroughly appreciated, perhaps not thoroughly fortunate, has closed,—happy at least in its ending—a life in which—

> "The busy day, the peaceful night,
> Unfelt, uncounted, glided by.
> His frame was firm, his powers were bright
> Though now his eightieth year was nigh.
>
> Then with no fiery, throbbing pain,
> No cold gradations of decay,
> Death broke at once the vital chain,
> And freed his soul the nearest way."

After the eulogy the choir accompanied by the orchestra rendered "Happy and Blest are They," from the oratorio of St. Paul.

Mayor Currier then said:—

Ladies and Gentlemen:— Many letters have been received from gentlemen who are unable to be present here to-day, but, owing to the lateness of the hour, I will read but one of them.

The letter received from Hon. Hamilton Fish of New York, which may be found among those selected for publication, was then read.

The Rev. Samuel J. Spalding D. D. of Newburyport then pronounced the benediction and the audience quietly dispersed.

At the close of the exercises in City Hall, the invited guests proceeded to the residence of Mayor Currier, on High street, where a substantial entertainment awaited them. The house was appropriately decorated, and the Germania Orchestra enlivened the occasion with some of their best musical selections.

The officers and members of the Cushing Guard who were present at the memorial services in City Hall, marched to the New Burial Ground with arms reversed and muffle drum beating, and deposited on the grave of Caleb Cushing a wreath of ivy, autumn leaves, smilax, white immortelles and Marshal O'Neil roses with the monogram "C. G." of purple immortelles in the centre, and thus brought to a fitting close the impressive ceremonies of the day.

LETTERS FROM INVITED GUESTS.

The following letters have been selected for publication from those received in answer to the invitation to attend the Memorial Services in commemoration of the life of Caleb Cushing.

FROM THE GOVERNOR OF MASSACHUSETTS.

COMMONWEALTH OF MASSACHUSETTS,
Executive Department,
BOSTON, September 24, 1879.

Hon. John J. Currier, Mayor of Newburyport.

His Excellency, the Governor, directs me to express his regret that a prior engagement will prevent his attendance at the service in Newburyport, October 8th, in commemoration of the life and character of the late Hon. Caleb Cushing.

Your obed't servant,

WILLIAM M. OLIN,
Private Secretary.

FROM THE LIEUT.-GOVERNOR OF MASSACHUSETTS.

September 22, 1879.

Hon. John J. Currier, Mayor of Newburyport.

My dear sir:—If possible I shall be happy to accept your kind invitation for the 8th of October, for which please accept my thanks. I am

Very respectfully yours,

JOHN D. LONG.

FROM THE SPEAKER OF MASSACHUSETTS HOUSE OF REPRESENTATIVES.

Hon. John J. Currier, Mayor of Newburyport.

Dear Sir: — Your kind invitation to attend the services in commemoration of the late Hon. Caleb Cushing is at hand, and you have my hearty thanks for the same. I regret, however, that absence from the state will compel me to decline being present.

Respectfully yours,

Levi C. Wade.

FROM THE CHIEF-JUSTICE OF THE SUPREME JUDICIAL COURT OF MASS.

Boston, October 4, 1879.

Hon. John J. Currier, Mayor of Newburyport.

Chief-Justice Gray very much regrets to find himself compelled, by imperative engagements elsewhere, to decline the courteous invitation of the city council of Newburyport to be present at the memorial service on Wednesday next.

FROM ASSOCIATE-JUSTICE MORTON OF THE SUPREME COURT.

Andover, September 26, 1879.

Hon. John J. Currier, Mayor of Newburyport.

My dear sir: — It gives me pleasure that I am able to show my respect for the late Caleb Cushing by accepting your invitation to be present at the memorial service to be given in his honor on the 8th of October.

Very truly yours,

Marcus Morton.

FROM ASSOCIATE-JUSTICE AMES OF THE SUPREME COURT.

Brookline, September 27, 1879.

Hon. John J. Currier, Mayor of Newburyport.

Dear Sir: — My engagements are such that I shall not be able to attend the memorial service in commemoration of the services of

your distinguished townsman, the late Hon. Caleb Cushing. With many thanks for your kind invitation,

I am respectfully yours,

SETH AMES.

FROM SENATOR FRENCH OF THE THIRD DISTRICT.

"ROCKLAWN," BAY VIEW, September 22, 1872.

His Honor, Mayor Currier, Newburyport.

Dear Sir: — I have the honor to be in receipt of your polite invitation to attend a memorial service in honor of the late Caleb Cushing, on Wednesday, October 8th. It will afford me much pleasure to attend.

I am very truly yours, &c.,

JONAS H. FRENCH.

FROM THE ATTORNEY-GENERAL OF THE UNITED STATES.

DEPARTMENT OF JUSTICE,
WASHINGTON, September 18th, 1879.

Hon. John J. Currier, Mayor of Newburyport.

Dear Sir:—I am much obliged by an invitation of the city authorities of Newburyport to be present at the memorial service in commemoration of the life and character of the late Honorable Caleb Cushing, and regret extremely that my engagements are such that I am compelled to decline the honor of uniting with the citizens of Newburyport in the last interesting tribute to be paid their distinguished fellow-citizen.

Your obed't servant,

CHARLES DEVENS.

FROM EX-SECRETARY OF STATE, HON. HAMILTON FISH.

GLENCLYFFE, GARRISON'S P. O.
PUTNAM COUNTY, N. Y., October 3, 1879.

Hon. John J. Currier, Mayor of Newburyport.

Dear Sir:—I regret my inability to accept the invitation kindly

extended to me to attend the memorial service in commemoration of the life and character of the late Mr. Cushing.

Prolific as Massachusetts has been of great men, great scholars, and great statesmen, she has produced few, if any, who in breadth of genius, or in extent of learning, research, scholarship or statesmanship, have surpassed or equalled Mr. Cushing. To him the nation owes much. Selected for the purpose by another of Massachusetts' great men, he opened the relations of this country with that vast Eastern Empire whose civilization dates back so many centuries, that it had come to regard as barbarians all outside its limits.

To him as the leading counsel before the Tribunal at Geneva, the country is indebted for the comprehensible presentation of its case, resulting in the verdict there obtained. His studies extended beyond the range of the municipal laws of his own country: — his knowledge of the law of nations and his familiarity with the languages, the literature and the institutions of other countries, enabled him to hold intercourse with, and to impress himself, and the points, and the logic of the American case, upon those to whom the English language was not familiar. His argument before the Tribunal, it was, which, delivered in a language understood by and familiar to each of the arbitrators, especially the three not named by either of the parties litigant, brought the law and the facts on which rested the American case to the intelligence of the entire court. For this, as for his many other great services, I join most cordially with you in the tribute of honor — high honor — to the memory of Caleb Cushing.

With much respect,

Your ob't servant,

Hamilton Fish,

FROM THE PRESIDENT OF THE MASS. HISTORICAL SOCIETY.

Brookline, Mass., October 4, 1879.

Hon. John J. Currier, Mayor of Newburyport.

My dear sir: — I have ventured to postpone any answer to your

obliging invitation, until I could see my way clear to accepting it.

I regret now on my return from New York, to be compelled to abandon the idea of being present at the memorial service on Wednesday next. My old relations to your late most distinguished statesman, in Congress and elsewhere, would have made this occasion peculiarly interesting to me; but an imperative engagment, of a somewhat public character, leaves me no alternative, and I can only offer you my grateful acknowledgements of the invitation, with sincere wishes that the service may be worthy of the subject, and of the city of which he was so long the pride.

Believe me, Dear Mr. Mayor,

Respectfully and truly yours,

ROBERT C. WINTHROP.

FROM THE PRESIDENT OF HARVARD COLLEGE.

HARVARD UNIVERSITY,
CAMBRIDGE, MASS., Sept. 24th, 1879.

Hon. John J. Currier, Mayor of Newburyport.

President Elliot regrets that on account of a stated meeting of the Board of Overseers of the University on Wednesday, Oct. 8th, at 11 a. m., he will be unable to attend the services in commemoration of Caleb Cushing at Newburyport. He also regrets his inability to accept the Mayor's very polite invitation for the same day.

FROM A COLLEGE CLASSMATE.

LOWELL, MASS., Oct. 7th, 1879.

Hon. John J. Currier, Mayor of Newburyport.

Dear Sir:— I am sincerely grateful to you for the opportunity of witnessing and joining in doing honor to the memory of your distinguished townsman, Hon. Caleb Cushing. I am indebted probably for this honor to the fact that I am a humble member of the Harvard class of 1817. It is often said a person had for classmates distinguished men, as if it was a distinction of his own acquiring, while,

in truth it is wholly accidental. In some respects this class has been remarkable. Eighty-one entered the class and sixty-seven graduated, of whom to-day, sixty-two years since their graduation, nineteen are living, and all would doubtless have honored your invitation by their presence, had not age and its consequences forbidden. The class has furnished Clergymen fifteen, five of whom have the degree of S. T. D., Physicians nine, Lawyers thirteen, Tutors in College six, Secretary of Navy one, U. S. Minister to England one, Judge of Supreme Court of U. S. one, Attorney-General of U. S. one, Members of Congress three, Ambassador Extraordinary to Spain one, Treasurer of Harvard College one, College Professors two, President of Brown University one, President of American Antiquarian Society one, Mayor of Boston one, Mayor of Cambridge one. The class celebrated the sixtieth anniversary of its graduation June 26th, 1877, and fourteen were present; all took part and enjoyed a full flow of spirited and interesting discussion, which was their last opportunity of listening to the eloquence of Mr. Cushing who never appeared to better advantage and charmed us all. Sylvanus D. Mitchell of Boston was detained by accident, and Rev. Stephen H. Tyng D. D. of New York detained by sickness sent a cordial and beautiful letter. The average age of this company was eighty-one years.

Respectfully yours,

John O. Green, M. D.

FROM A COLLEGE CLASSMATE.

103 West Springfield Street,
Boston, October 1, 1879.

Hon. John J. Currier, Mayor of Newburyport.

Dear Sir: — I wish gratefully to acknowledge the courtesy extended to me by you, as the municipal head of your city, inviting me to attend the memorial service in honor of your late distinguished fellow citizen, Caleb Cushing.

It will give me pleasure, as one of the few survivors of the Harvard class of 1817, to be present at the service in honor of him,

though it is true that, as far as I am personally concerned, "the divinity that shapes" our course in life has led him and myself in such divergent paths that since our graduation we have rarely met.

His eminent intellectual ability, his varied scholarship, his distinction as a jurist, and of late years his services to his country in its foreign relations, are well known to everybody, and, of course, have been recognized and watched with interest by his classmates. His frank and courteous greeting when we did occasionally meet, it was always a pleasure to encounter.

As the numbers of the class dwindle, the survivors naturally gather closer together, abiding the time of their own departure, while recalling the memories of the departed, and the distinctions arrived at by them in their earthly career. I hope to be with you at the time appointed.

Very respectfully,

Your friend and servant,

ROBERT F. WALLCUT.

FROM ONE OF THE SELECTMEN OF SALISBURY.

SALISBURY, MASS., Oct. 4, 1879.

Hon. John J. Currier, Mayor of Newburyport.

Dear Sir: — In the early records of this town frequently occurs the name of Caleb Cushing. First, "Rev. Caleb Cushing"—"Hon. Caleb Cushing," as a delegate to the Congress at Watertown—"Caleb Cushing," town clerk—"Caleb Cushing," clerk of the first parish church — "Caleb Cushing," "Committee of Conference in the Revolutionary period," &c., and last we have the record of the birth of Caleb Cushing, who, at the age of two years, made Newburyport his home, and honored her with the record of his public life.

I accept with pleasure your invitation to be present at the memorial service in commemoration of his life and character.

Very respectfully yours,

W. H. B. CURRIER.

FROM PROFESSOR WILLIAMS OF YALE COLLEGE, INTERPRETER FOR MR. CUSHING IN CHINA.

New Haven, September 19th, 1879.

Hon. John J. Currier, Mayor of Newburyport.

Dear Sir:— I beg to return my sincere thanks for the polite invitation which you have sent me to attend and join in the memorial service for Mr. Cushing, on the 8th prox. The city of Newburyport does herself honor in thus recognizing and setting forth the character and services of her distinguished son, who has written his name in the annals of the Republic in so many ways and excelled in such diverse lines.

In sending this note of regret that I shall be unable to attend, I add the wish that the occasion may succeed according to your highest anticipation.

Believe me Sir,

Yours respectfully,

S. Wells Williams.

FROM HON. CHARLES LEVI WOODBURY OF BOSTON.

Boston, October 1, 1879.

Hon. John J. Currier, Mayor of Newburyport.

Sir: — It will give me much pleasure to accept your kind invitation to be present at the memorial services in commemoration of your illustrious townsman, General Cushing. From the time of his return from China I have had much friendly intercourse with General Cushing, and observed with admiration his vast and varied acquirements, the facility with which he wielded them, the extraordinary vigor of his mind, and the energy and industry of his habits. He was not reticent in conversation; his store of knowledge was free to those who sought it. I regard as one of the most pleasing and impressive incidents in his political career the warm affection and esteem he received from the citizens of Newburyport. Without regard to party politics, time and again, they sent him to the legislature, because they believed his experience, judgment and

knowledge were more important qualifications than his political affiliations. It is honorable to their independence and dignity, as it also is creditable to his uprightness and integrity, that such rare evidence of good citizenship on the part of constituents and of agent should be furnished by Newburyport. Although the prestige of his services in connection with the general government overshadows this more local incident, yet I trust that neither the memory of these facts nor of his great usefulness in the state legislation will be lost.

I am very truly yours,

CHARLES LEVI WOODBURY.

FROM EX-CHIEF-JUSTICE CUSHING OF NEW HAMPSHIRE.

CHARLESTOWN, N. H., October 4, 1879.

Hon. John J. Currier, Mayor of Newburyport.

Dear Sir: — Your favor, enclosing an invitation to be present at the memorial services in commemoration of the life and character of Mr. Cushing, came duly to hand. I regret that my professional engagements will prevent my accepting your invitation to be present. I regret this the more because my family is perched on a remote branch of the same genealogical tree as the late Mr. Caleb Cushing, a fact which increases my interest in the occasion.

Very respectfully,

Your obedient servant,

E. L. CUSHING.

FROM REV. S. K. LOTHROP, D. D., OF BOSTON.

BOSTON, September 30, 1879.

Hon. John J. Currier, Mayor of Newburyport.

Dear Sir: — I accept with much pleasure the invitation with which I have been honored by the city council of Newburyport, to attend the memorial service in commemoration of the life and character of the late Hon. Caleb Cushing. I have known Mr. Cushing for more than sixty years, and at times had opportunity for much

intercourse with him. I heard Mr. Webster say once, in speaking of his ability and wonderful powers of acquiring knowledge, that Mr. Cushing had not been six weeks in Congress before he was acknowledged to be the highest authority on what had been the legislation of Congress upon any given subject. No man could tell so instantly what had been the action of the government in relation to any matter as Mr. Cushing.

I shall be happy to share in the honor shown to his talents and his public services.

Very respectfully yours,

S. K. Lothrop.

FROM PRESIDENT OF NEW ENGLAND HISTORIC-GENEALOGICAL SOCIETY.

Hon. John J. Currier, Mayor of Newburyport.

Boston, September 26, 1879.

My Dear Sir: — I should be most happy to participate in the memorial services in honor of the late Caleb Cushing, LL. D., but I am not sufficiently recovered from the accident which befel me last spring as to do so. With many thanks for your kind invitation, I am

Most respectfully yours,

Marshall P. Wilder.

FROM GENERAL DAVIS OF PENNSYLVANIA.

Doylestown, Pa., Sept. 20, 1879.

Hon. John J. Currier, Mayor of Newburyport.

Dear Sir:— I am greatly obliged for your invitation to attend the Cushing memorial services on the 8th prox. Nothing but the most positive engagement will prevent me being present on that interesting occasion. I served on General Cushing's staff during the Mexican war, and had great respect for him. I was with him at Newburyport in the winter of 1846–47, when he had a public reception. I remain

Yours respectfully,

W. H. H. Davis.

FROM THE CLERK OF THE U. S. SUPREME COURT.

WASHINGTON, D. C., October 6th 1879.

Hon. John J. Currier, Mayor of Newburyport.

Dear Sir:— I regret very much that urgent business and feeble health constrains me to decline your kind invitation to attend the memorial service in commemoration of the life and character of the late Caleb Cushing.

Very truly yours,

D. W. MIDDLETON.

FROM BISHOP CLARK OF RHODE ISLAND.

BONLEDGE, WARWICK NECK, R. I., Sept, 18, 1879.

Hon. John J. Currier, Mayor of Newburyport.

Dear Sir:— I regret to say that another engagement prevents me from accepting your polite invitation to attend the memorial service on Wednesday next.

Very truly yours,

THOMAS M. CLARK.

FROM HON. GEORGE LUNT OF SCITUATE, MASS.

SCITUATE, MASS., Oct. 6, 1879,

Hon. John J. Currier, Mayor of Newburyport.

Dear Sir:— You must not impute it to any incivility that I have not heretofore replied to the invitation to attend the observance of the obsequies of Caleb Cushing. In fact, I have been ill enough to make it still inexpedient for me to be absent from home, though now considerably better. With my best wishes for the success of the celebration, I remain

Yours very truly,

GEORGE LUNT.

FROM PATTEN SARGENT ESQ. OF MERRIMAC.

MERRIMACPORT, MASS., Oct. 4, 1879,

Hon. John J. Currier, Mayor of Newburyport.

Dear Sir:— I accept with pleasure the kind invitation to attend the memorial services in honor of the late Caleb Cushing. I have

felt great respect for him for over fifty years, when I first knew him as a candidate for representative for Congress, in which he had my hearty support till elected. I am now over 86 years old.

Very respectfully yours,

PATTEN SARGENT.

FROM B. H. CHEEVER ESQ. OF WRENTHAM, MASS.

WRENTHAM, Oct. 6, 1879.

Hon. John J. Currier, Mayor of Newburyport.

Dear Sir:— I have the honor to acknowledge the receipt of your kind invitation to join in the memorial services to the late Caleb Cushing on the 8th inst. I regret to say that my delicate health prevents me from joining in these interesting services; interesting especially to me whose good fortune it was to have met Mr. Cushing at Washington in 1840, and to have known him perhaps more intimately, socially, politically, and in business affairs, than any other person, which intimacy continued through all his varied and most eventful life up the time of his death. In a most active life in Washington during all these years, both in public and private, I have been associated intimately with the leading men of all parties, the makers as well as the executors of the laws, and I can with entire truth say I have never met so learned a man as Caleb Cushing. He was called upon by the highest official, as well as the humblest citizen, and was a cheerful dispenser of knowledge. I well remember that Mr. Sumner, a few months before his death, referring to my long and intimate relations with Mr. Cushing, said, "he had never met at home or abroad, with any one so full of knowledge as Caleb Cushing." With thanks for your invitation. I am with great respect.

Your obedient servant,

B. H. CHEEVER.

FROM ALEX Y. P. GARNETT ESQ. OF WASHINGTON, D. C.

Hon. John J. Currier, Mayor of Newburyport.

WASHINGTON, D. C., October 6, 1879.

Dear Sir:— Your favor of the 3d inst. inclosing an invitation to your residence upon the occasion of the memorial services to be

held in honor of the late Mr. Caleb Cushing, has been received.

I regret to say that imperative engagements here will compel me to forego the pleasure of being present at that time and witnessing ceremonies which could not fail to inspire me with the deepest interest. It affords me no little gratification, my dear sir, to witness this demonstration on the part of the citizens of Newburyport, evidencing as it does, an appreciation and respect for those estimable qualities of mind and heart illustrated in the career of our late illustrious friend, so strikingly in contrast with the demoralized and vitiated taste which characterizes the present epoch of our national existence.

The man who can impress his posthumous memory upon the minds of the public, either by his superior wisdom, exalted patriotism, spotless character or universal philanthropy, through one decade of the present age, is as much an object of wonder as of admiration. The *auri sacra fames* which overshadows all other elements of human character in the present day, with its attendant train of licentiousness and irreverence, recognizes none but the living. The very fanes of our ancestors have been invaded and ruthlessly despoiled of their sacred relics and cherished mementoes of patriotism and moral excellence. The memory of Washington himself is no longer respected, but daily held up to ridicule by the public press. Even death invests the memory of a public man with no sanctity which can secure him an immunity from the ridicule and calumny of a vulgar and depraved public taste; surely "the evil that men do lives after them. The good is often interred with their bones."

Viewed from this standpoint, I repeat that the ceremonial to which you have so kindly invited me, is peculiarly grateful to my feelings as a friend and admirer of Mr. Cushing. I enjoyed unusual opportunities of forming a correct estimate of his character in all of its aspects, and still mourn the loss of a true and steadfast friend, an instructive and cultivated companion, and a wise and useful fellow-citizen.

Very truly and respectfully,

ALEX Y. P. GARNETT.

FROM HENRY WISE GARNETT ESQ. OF WASHINGTON, D. C.

Hon. John J. Currier, Mayor of Newburyport.

WASHINGTON, Oct. 6, 1879.

Dear Sir:— I take pleasure in acknowledging your invitation to be present at the memorial service to be held in honor of our lamented fellow-citizen and friend, Hon. Caleb Cushing. It would give me great pleasure to accept the invitation, and be one of those assembled to do honor to the memory of a son of whom your city may well be proud, and hoping that it would be in my power to be present, I have postponed answering your card until now; when finding that I shall be unable to leave this city, I am compelled to regretfully decline; in so doing, however, let me assure you, and through you the Council of your city, of my high appreciation of your and their courtesy in placing me among the friends of Hon. Caleb Cushing, by the invitation, and my full sympathy with and desire of participation in all honor to his memory. With the warmest sentiments of esteem, I am, my dear sir,

Yours very truly,

HENRY WISE GARNETT.

FROM REV. ALONZO H. QUINT D. D. OF DOVER, N. H.

BOSTON, MASS., Oct. 6, 1879.

Hon. John J. Currier, Mayor of Newburyport.

Dear Sir:— I acknowledge the kind courtesy of an invitation to the memorial service in honor of Hon. Caleb Cushing. I extremely regret that my absence from Dover prevented my receiving the invitation until to-day, and I beg you to excuse the apparent delay in reply. I accept the invitation with gratitude, and with sincere respect for the memory of the distinguished man whom the city and nation honor.

Very respectfully yours,

ALONZO H. QUINT.

FROM MR. JAMES WORMLEY OF WASHINGTON, D. C.

His Honor, Mayor Currier, Newburyport.

WASHINGTON, Oct. 6, 1879.

Dear Sir:— I have received your kind invitation to be present at a memorial service in commemoration of the life and character of the late Hon. Caleb Cushing LL. D.

I regret that it will be impossible for me to be present. I have forwarded to you a portrait which I shall be pleased to present to your city as an humble tribute of my respect and esteem for your great townsman, the late Hon. Caleb Cushing LL. D.

Respectfully yours,

JAMES WORMLEY.

FROM HON. WILLIAM WILLIAMS, MAYOR OF GLOUCESTER.

A MEMORIAL TRIBUTE.

His constant quest, renown, by land and sea;
His city's motto, *Terra marique.*

Of recent exits, in this nineteenth age,
You've seen depart the scholar, saint, and sage.*
Your proto-mayor we no longer see,
But fain would celebrate his memory.
In varied learning, languages and law,
Ranks high our country's honored counsellor:
Noted amid its magnates, stands his name
Inscribed well up the sparkling roll of Fame,
As legislator, soldier,— ne'er at ease,—
This Solon, Cæsar, and Demosthenes,
Acts well his part, whatever be his role,
Semper paratus animates his soul.
Ambassador or statesman, he shrinks not,
But, scores his mark, whate'er may be his lot.

*Dr. Richard S. Spofford.

Mexico, China, Switzerland, and Spain,
Witness the grand achievements of his brain.
His choice pursuit is sober, earnest thought,
He wooes Minerva, much as Plato taught.
Half-mast your colors, and your ensigns dip,
Death flashes on the deck, and wrecks the ship!
He stills the tongue, dissolves the nuptial knot,
His silent mandate, erst,—Ties, come to naught!
Snaps envy's halliards, prejudice becalms,—
The heart beats freer, and the bosom warms:
Merit advances, eulogy begins,
Fierce calumny retreats, and justice wins.
Prompt, kind, and faithful to his gentler half,—
Ora y siempre, their epitaph:
Near fifty years, this jurist kept his vow,
As all who've seen that tombstone, then and now,
Can testify. It was this great man's pride,
To keep his troth and talents, side by side.
He kept them thus, till life's last breath was spent,
And his sad friends must rear his monument.
Peace to thy shade, distinguished Cushing, peace!
Thy brilliant, active mind can never cease.

FROM JOHN G. WHITTIER, OF AMESBURY.

Hon. John J. Currier, Mayor of Newburyport.

Amesbury, Mass., 10th mo. 13, 1879.

Dear Friend:— It is a matter of real regret that I failed to see thy note of invitation to the memorial services of my old friend Caleb Cushing, until after they had taken place. It would have been a satisfaction to me to have been present on that occasion.

I am very truly thy friend,

John G. Whittier.

APPENDIX.

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BIOGRAPHICAL SKETCH.*

Caleb Cushing was born in Salisbury January 17, 1800, and was descended from an old colonial family of distinction. His father, the late Mr. John N. Cushing, an enterprising and wealthy merchant, moved to Newburyport in the year 1802, where the family has since resided. He was fitted for college by Mr. Michael Walsh, a noted teacher, who then had a private school in Newburyport. He entered Harvard College in 1813, and graduated in the summer of 1817, being the third scholar in his class.

Having made choice of the law for a profession, he immediately entered the Harvard law school and remained one year, and then finished his law studies in the office of Mr. Ebenezer Moseley, a distinguished lawyer in Newburyport. He was admitted to practice as attorney in the Court of Common Pleas at the December Term, 1821, and at once began his professional career in Newburyport. For the next dozen years his attention was given to law, literature, and politics.

While preparing for admission to the bar, he was some time tutor in Harvard College; translated Pothier's famous treatise on maritime contracts, adding illustrative notes, and writing a memoir of the author; delivered an oration on the fourth of July, 1821, in Newburyport, and wrote articles for the North American Review. He also acquired the French, Italian and Spanish languages, and became an expert in botany and mineralogy.

*This brief biographical sketch was written by Charles W. Tuttle Esq., of Boston, Mass., who is preparing an extended memoir of Mr. Cushing for the Massachusetts Historical Society.

In January, 1822, he became associate editor of the Herald, a local semi-weekly newspaper, and was a constant contributor to the editorial columns while that connection lasted. His literary reputation soon led to his writing articles, chiefly historical and political, for nearly all the best periodical publications in the Atlantic states, besides the North American Review to which he was a constant contributor for twenty years. He also wrote many pieces of poetry which found their way into newspapers and magazines of that time.

He was elected a member of the school committe, and served in that capacity for several years. In August he delivered a public address before the Washington Light Infantry, and two years later was commissioned lieutenant in that company.

In August, 1824, Gen. La Fayette visited Newburyport, and Mr. Cushing was one of the committee of reception on that memorable occasion. In November he married Caroline Elizabeth, daughter of Mr. Justice Wilde of the Supreme Judicial court of Massachusetts, then residing in Newburyport.

In 1825 he was chosen a representative to the General Court, and the year following a senator. In both houses he was conspicuous as a debater, and served on important committees. His career in active political life dates from this period.

In 1826, Governor Lincoln appointed him judge advocate of the second division of the Massachusetts militia; and he immediately distinguished himself in a case tried before a court-martial held at Ipswich. He wrote and published a vigorous argument in favor of the claims of the citizens of the United States on Denmark, an effort said to have had the distinction of being refused admission into the Danish kingdom, while it was applauded by all Americans. At Lynn he delivered a Masonic address which was received with much favor, and printed.

On the death of Mr. John Adams and Mr. Thomas Jefferson, both on the same day, the citizens of Newburyport requested Mr. Cushing to deliver an eulogy on the lives and characters of these illustrious men. He accepted; and his tribute to their memory gave great satisfaction to all parties, adding much to his own reputation as a public orator. In the autumn he issued a small volume entitled, "The History and Present State of the town of Newburyport," a work that he had projected several years before.

He was now admitted a counsellor of the Supreme Judicial Court, the highest rank at the bar, and argued his first case before that court, Mr. Webster being his opponent. He formed a law partner-

ship with the late Mr. Robert Cross of Newburyport and it continued for several years.

In October he was nominated for representative to Congress by a republican convention, largely representing the commercial and manufacturing interests of that congressional district. It was said in favor of Mr. Cushing, among other things, that he was an able debater, and that he favored the recovery of our foreign claims, and legislation to protect our domestic industries. But Mr. John Varnum of the same political party and congressional district, had been one term in Congress and given general satisfaction, and was entitled to be nominated again according to the usage in such cases. Mr. Varnum's friends were surprised and offended at the introduction of Mr. Cushing as a candidate at this time, and they bent all their energies to defeat him. A short and personally bitter political campaign ensued and Mr. Varnum was re-elected. It is worthy of note that Newburyport, Salisbury and Amesbury each gave Mr. Cushing large majorities.

In 1828 he wrote and published an elaborate review of the question, then much discussed by the public, of the right of Universalists to testify in courts of justice, maintaining that this religious belief was no disqualification. He was again this year, and the following, a representative in the General Court, at the same time serving the town as moderator of public meetings and as selectman.

For several years his health had not been good, interfering much with his professional and literary vocations. Much of it was undoubtedly due to uninterrupted application to business and studies. The remedy for this was rest from such labors. A visit to Europe seemed most likely to restore his health, besides giving him the benefit of foreign travel and observation. In June, 1829, he and Mrs. Cushing sailed for Holland. They travelled at leisure through France, Spain, and England, studying together the manners, monuments, and history of those countries, and reached home in September of the following year. Mrs. Cushing, a year or two later printed, for private circulation, two volumes containing letters which she had written to her father during her travels in France and Spain. Mr. Cushing wrote two volumes entitled, "Reminiscences of Spain," a country and people that always excited his interest and imagination.

On the fourth of July, 1832, he delivered an oration before the citizens of Newburyport and took occasion to discuss the question of nullification, then so rife in South Carolina. With

August came an event that carried sorrow to his heart and home. His accomplished wife died after a short illness, just as she had read the last proof sheets of her book on France and Spain.

In October he was nominated for representative to Congress, but declined to accept the nomination.

The next year he wrote two volumes entitled, "Review, Historical and Political, of the late Revolution in France." It was his fortune to be in France during the famous "three days revolution," and to receive information from many persons concerned in it.

He was representative to the general court in 1833, and 1834. During the latter year he made a very celebrated speech on the Bank of the United States, and on the removal of the Public Deposits, a matter then pending in Congress.

In May, 1834, Gen. LaFayette died; and no where was his death more lamented than in the United States. Public eulogies on him were delivered in many states. An association of patriotic young men in Dover, New Hampshire, requested Mr. Cushing to deliver an eulogy on La Fayette in that town, and he accepted the invitation. His eulogy was soon after printed, and widely read.

In November he was elected representative to the twenty-fourth Congress of the United States, and thrice in succession afterwards.

Mr. Cushing's congressional career is a brilliant and famous one; and it forms a part of the political history of that period. There was no great public question before Congress while he was there, that did not interest him, and did not receive illustration at his hands. He was at once placed on the House Committee of Foreign Affairs, and remained there during the eight years he was in Congress. Mr. John Quincy Adams and Mr. Cushing were alternately at the head of that committee

The bi-centennial of the settlement of Newbury occurred in May, 1835, and the event was appropriately celebrated, Mr. Cushing delivering the oration. Mr. Edward Everett and many other distinguished gentlemen were present.

In the presidential campaign of 1840, he was an active and earnest supporter of Mr. William Henry Harrison for president. He wrote a summary account of the life and services, civil and military, of the whig candidate. In August his constituents in Newburyport gave him a public dinner, on which occasion he and Mr. Webster made political speeches favoring the election of Mr. Harrison. The attendance was large and great enthusiasm prevailed.

The death of President Harrison in the year 1841, soon led to a

rupture in the Whig party. Mr. Tyler, vice president, who succeeded to the office of president, failed to sustain the policy of his party. Mr. Cushing was one of several members of the House who stood by Mr. Tyler and his administration.

In October, 1842, his constituents and others in Newburyport invited him to address them on the subject of the proceedings of the late session of Congress, and also on the affairs of the nation. He accepted, and made a speech justifying the acts of the administration and his own political course in Congress.

At the close of his fourth term in Congress, in March, 1843, the president thrice nominated Mr. Cushing for secretary of the treasury, and the Senate as often refused to confirm the nomination. In May he was appointed commissioner to China, and envoy extraordinary and minister plenipotentiary of the United States to the court of that empire. His mission was to enter into diplomatic relations with that government, and to negotiate a commercial treaty between the two countries.

In August, 1843, he sailed for Alexandria in Egypt, proceeded over land to Bombay, and there was taken on board the United States frigate Brandywine and carried to China.

The purposes of his mission were accomplished in six months after his arrival in that empire. He then set out for home by way of the Pacific Ocean and Mexico. Arriving at Acapulco he courageously took a land route across the continent, and was robbed and plundered while on the way, not an unusual experience with travellers in that country.

The commercial treaty which he negotiated was approved by the Senate, and continued in force many years without change. For a long time it was a model for other treaties between China and the commercial nations of Europe.

The annexation of Texas was one of the measures of Mr. Tyler's later administration, and was supported by the Democratic party, with which Mr. Cushing had now become identified. On the breaking out of the war with Mexico, in May, 1846, an event which soon followed annexation, the President called for a single regiment of Massachusetts Infantry; but such was the opposition to the war that at the end of the year the regiment was still incomplete. Mr. Cushing was a representative in the General Court which assembled in January, 1847. On the second day of the session he offered a resolution appropriating $20,000 to equip this regiment, and supported it with a masterly speech. A large oppo-

sition came directly forward to oppose it. After a debate, covering a period of about three weeks, the resolution was defeated by an overwhelming majority.

While the resolution was pending in the House, and even before, Mr. Cushing was actively concerned in organizing the regiment, contributing money from his own private means. On the fifteenth of January, the commissioned officers assembled and elected him colonel of the regiment. He accepted, although he was aware that the president designed to make him a brigadier general in the army. His friends in Boston presented him a sword, and the ladies in Newburyport a ring.

Mr. Cushing left for Mexico in March, his regiment having preceeded him. In April he was commissioned brigadier general. The conquest of Mexico was well nigh accomplished before he reached the theatre of war. It fell to him to command important posts, and to take part in important courts of military inquiry. He was in no action while in Mexico; but he showed capacity for military command, and was noted as a strict disciplinarian.

In September, 1847, while he was still in Mexico, the Democratic Convention held at Worcester, nominated him for governor of the Commonwealth, and he accepted, writing his letter of acceptance from Vera Cruz, in the month of October. While the party made a gain of over nine thousand votes, Mr. Briggs, the Whig candidate, was again elected by a large majority.

Mr. Cushing returned from Mexico in July, 1848, and on his arrival in Newburyport was greeted by a large number of his fellow citizens, and with a salute of one hundred guns. A week later he made a speech in Market Hall, giving his views of the late war and its results. In the autumn he was again nominated by the Democratic State Convention for governor of the Commonwealth. At that time no popularity, and no civil or military distinction could elevate a Democrat to the gubernatorial office of Massachusetts.

In 1851 he was representative to the General Court, and took a leading part in the legislation of that year. While there he procured the charter giving Newburyport a city government. The devices on the city seal were suggested by him, and he was elected the first mayor. In June of the same year he was elected commander of the Ancient and Honorable Artillery Company of Boston, and served in that capacity one year.

In May, 1852, Governor Boutwell appointed him Associate Jus-

tice of the Supreme Judicial Court of Massachusetts, and he accepted. When he first went to Congress, seventeen years before, he substantially gave up practice of the law. Many thought this a disqualification for so responsible a judicial station; but they were surprised to find that he showed as much familiarity with law and practice as if he had come directly from the bar.

His judicial career was short — less than a year; for in March, 1853, President Pierce selected him for the place of Attorney-General in his Cabinet, and he accepted without delay. He immediately resigned his seat on the bench of the Supreme Court and entered on the duties of his new station. For a period of four years he devoted himself to the business of his office. The three volumes which contain his official opinions are regarded as a monument to his capacity, learning, professional attainments, and great and unwearied industry.

On his return to Newburyport in April, 1857, after four years official residence at Washington, his friends extended to him a hearty welcome. It was an occasion when all classes of citizens united to manifest their appreciation of his great public services. In response to an address of welcome he made an able and interesting speech which was received with favor and applause.

His return to private life led him to return to his profession again. His abilities as a lawyer were now known and recognized all over the country, and his professional services were in demand, especially in matters litigated in the United States courts. In September he opened a law office in Boston, and resumed practice of the law which he never wholly gave up during his life.

The public agitation of the slavery question led him into political discussions. He was sought after from all quarters, to address public assemblies on this subject and other political questions. He made many political speeches, and wrote many letters, during the period which ended with the breaking out of the civil war.

In 1858 and 1859 he was a representative to the General Court, taking an important part in the proceedings of the House.

Mr. Cushing was a delegate to the National Democratic Convention held at Charleston, South Carolina, in April, 1860, to nominate a presidential ticket. He was elected president of the Convention; and for more than a week presided over the deliberations of an excited assembly, divided into Northern and Southern democracy, into Douglas and anti-Douglas parties. After balloting many days no result was reached, neither party showing the least disposi-

tion to yield to the other. The convention then adjourned to meet in Baltimore in June following.

The convention again assembled pursuant to adjournment, and proceeded to ballot for a candidate for president with no better result than before. Soon Southern delegations began to withdraw from the convention; and on the sixth day, the delegates of a majority of the States of the Union, either in part or the whole, had ceased to participate in the proceedings of the convention. Mr. Cushing then made a brief speech, resigning the presidency of the convention, and soon after withdrew, as did fourteen others of the delegation from Massachusetts. Upon this further secession from the convention, the Douglas party prevailed, and nominated Mr. Stephen Arnold Douglas for president.

The delegates that had seceeded soon met in another hall in Baltimore and elected Mr. Cushing president. This convention immediately nominated Mr. John C. Breckenridge for president of the United States, and dissolved. Mr. Cushing supported the nomination of Mr. Breckenridge, and took an active part, for the last time, in a political campaign. He used every means and every argument in his power to stay civil war, but to no purpose.

The war having come at last, he took his position with the North, and offered his services to Governor Andrew. They were most unkindly rejected.

Mr. Cushing continued to devote himself to his profession, still keeping a law office in Boston. He was representative to the General Court in 1862, and 1863, and took an active part in the legislation of those years. In politics he was neutral. He acted as seemed to him best, without regard to party.

In 1864, President Lincoln appointed him to represent the government before a mixed commission appointed to liquidate certain claims of Great Britain against the United States. His professional employments had now come to be almost wholly of a public character. His large acquaintance with international law, and with the federal relations between the States, made him a very useful adviser of the several departments of the government.

In 1866 he removed to a fine estate in Virginia, near Washington, where he continued to reside for the next ten years. President Johnson had this year appointed him one of the commissioners to codify the laws of the United States; but he soon relinquished this service on account of more pressing engagements.

In November, 1868, he was sent by the United States on a

special mission to the United States of Columbia, to negotiate with that government a treaty concerning a ship canal across the Isthmus. He accomplished the object of his mission and returned home early in 1869.

In 1870 the Mexican government appointed him Advocate, to act for that Republic before a mixed commission sitting in Washington, to adjust claims between Mexico and the United States. In January, 1872, he resigned this employment to accept an appointment to act as one of the counsel in behalf of the United States before the tribunal of Arbitration, between Great Britain and the United States, authorized by the recent Treaty of Washington.

This appointment was everywhere hailed with applause. His eminent fitness to deal with all public questions that might arise during the progress of the hearing before this international tribunal, was recognized by all who had any just conception of his powers. That he made a distinguished figure before that august tribunal, and acquitted himself to the entire satisfaction of his own government, are well known to all.

On his return to the United States, in 1873, he wrote a volume entitled, "The Treaty of Washington, its Negotiation, Execution, and the Discussions Relating thereto," which was printed here and also in France. His criticism on the action of the English Arbitrator, Lord Cockburn, attracted much attention here and in England.

In January 1874, President Grant appointed Mr. Cushing minister to Spain, and the Senate confirmed the nomination. This appointment was hardly made when the chief justice of the Supreme court of the United States died. The president hastened to nominate Mr. Cushing to fill this vacancy on the Supreme bench. It was an appointment neither solicited nor expected by him. Forthwith came a cry of protestation, mainly from the abolitionist element of the Republican party that never forgave him for his active opposition to them. The objections urged against him were political. His capacity and juridical learning no one ventured to question. Mr. Cushing requested the president to withdraw the nomination, and without delay went on his diplomatic mission to Spain.

He made a short visit to the United States in the summer of 1876. Returning to the imperial court of Madrid, he remained there until February, 1877, when he resigned and came home some months later. His diplomatic career was a successful one; and his official residence in Spain agreeable to him.

Although nearly eighty years of age, the venerable statesman appeared as strong and vigorous as he did at sixty.

He now took up his residence at Newburyport, among his fellow-citizens, who bade him welcome. He was steadily employed in professional matters till within a few days of his death, which occurred on the evening of January second, 1879.

PROCEEDINGS OF THE CUSHING GUARD.

The Cushing Guard is an ancient military organization in Newburyport. It originated in 1774, being a voluntary association of persons interested in military exercises. Next year the town voted to accept its services, the war with Great Britain then just breaking out. This company formed part of the artillery force under Gen. Sullivan in the campaign of 1778, in Rhode Island. It continued an organized independent artillery company after the war ended. In the war of 1812 it was called to do coast guard service, and was very useful.

In 1820, a higher social element having control of its action, it formed a constitution and assumed the name, "Newburyport Artillery Company." A new career of prosperity and usefulness dates from this epoch.

In 1834, the Washington Light Infantry, long a rival military organization, disbanded, and many of its members joined the Artillery Company. Mr. Cushing delivered one of his early public addresses before this Light Infantry company, and was at one time a sergeant, and later a lieutenant in it.

In 1844, the Artillery Company changed its name to Washington Light Guard. In 1852, during the mayoralty of Mr. Cushing, the name of the company was again changed to "The Cushing Guard," in honor of the distinguished mayor.

In 1855, the Cushing Guard became annexed to the Massachusetts Volunteer Militia, and formed company A, in the eighth regiment, where it now remains.

When the civil war broke out in April, 1861, it was the first to start for the theatre of war, on the call for Massachusetts troops,

and did heroic service there. Captain Albert W. Bartlett, who commanded the company, fell in the memorable battle of Antietam.

At a special meeting of the Cushing Guard, held at their armory, Friday evening, Jan. 3d, 1879, Captain David L. Withington presiding, the following resolutions were adopted:

WHEREAS in the death of Caleb Cushing our city loses a citizen who has honored her in the highest degree, and from her deserves the highest honor in return; and

WHEREAS in his death the Cushing Guard loses a lifelong friend, whose name it is our high privilege to perpetuate, and the militia of Newburyport a past member and officer who claims our highest tribute of respect,

RESOLVED, That this be an expression of our heartfelt sympathy to his relatives in the sudden loss of one who though full of years yet promised long to remain in the quiet enjoyment of the family circle after a life-absence in the pursuits of public affairs.

RESOLVED, That in the event of a public funeral the company tender their services as escort if desired.

RESOLVED, That a copy of these resolutions be forwarded to the family of the deceased, and entered on the records of the company.

The company also voted to have their armory draped in mourning on the day of the funeral.

PROCEEDINGS IN THE GENERAL COURT.

In the House of Representatives on January 3, 1879, Hon. John I. Baker of Beverly, announcing the death of the late Hon. Caleb Cushing, said :—

Mr. Speaker:—An American statesman is dead. Caleb Cushing, one of the most distinguished of the many distinguished sons of old Essex, is no more. But the record of a memorable life remains as a part of the history of his state and country. His great industry, learning, and patriotism enabled him to render most valued public service, both at home and abroad, and that often in some of the most critical periods of our history. Beginning the record of his public life in this Hall more than half a century ago, and continuing in the public service during all the years of a long and useful life, it seems fitting that here there should be paid a brief tribute to his memory. And as the senior member of this House, and a citizen of Essex county, who enjoyed the acquaintance of the distinguished dead during nearly all of his public life, I have felt called upon to offer the following resolution :

Resolved, That the house has learned with regret of the death of the Hon. Caleb Cushing, a man whose great talent and attainments were an honor to this Commonwealth and especially to this house, of which he was often and long a member. For more than half a century his wonderful powers were given to public work ; and the representatives of the people only do their duty in recognizing his devotion to their services.

Judge Russell of Boston then said :—

Mr. Speaker:—I hoped that some older member would have followed our friend from Beverly and have spoken fully of the abil-

ity and attainments of the great man who has departed from earth. His wonderful powers and his vast public services are familiar to us all. But I would rather say a word on some points less familiar. It is good to recall the fact that in the evil days Caleb Cushing stood on the floor of Congress side by side with John Quincy Adams, contending for the insulted right of petition. Well do I recollect the glowing lines of Whittier demanding that Massachusetts should recall them both, "the old man eloquent" and the young, from an assembly not worthy of such men. You all know that when civil war first threatened our country General Cushing addressed the people of his native city for portions of three days on the wrongs inflicted upon the South by the North. But it is not so well known that he started for Charleston intending to give the complement of that speech—the wrongs received by the North from the South; studying the things that should make for peace. It was too late for that address to be delivered, but it is well to remember to-day that Mr. Cushing had the heart to try to make it. When war actually broke out General Cushing promptly offered his services as a soldier. The offer was refused; but no less truly did he serve his country, for the whole inexhaustible armory of his brain was always at her service in defending her against her enemies at home and abroad. All departments at Washington, and especially the State department, freely received his invaluable advice. It shows where he stood, that he spent one evening of every week at the house of Charles Sumner, holding high counsel with him for the preservation of the Union.

But I would speak more especially of one of Mr. Cushing's acts while he was Attorney-General. The Dred Scott decision had denied United States citizenship to colored men. As a consequence of this decision, no colored man could receive a passport. At this time a poor and worthy citizen of Boston, Dr. John S. Rock, desired to visit Paris for a surgical operation, which the famous Louis alone was thought competent to perform. But, as Orsini had just made his attempt on the life of Louis Napoleon, to go to France without a passport was to enter a French prison. Both our excellent senators tried to obtain a passport for Dr. Rock, but they tried in vain. He came to me in despair, and asked whether his life must be sacrificed to a wretched legal quibble. I appealed to Attorney-General Cushing, and almost by return mail he sent the passport, with a request that the affair should be kept secret. And it was kept secret until it had ceased to be perilous in America

to do justice and love mercy. I do not know by what ingenuity Mr. Cushing obtained the document, but I do know that it must have been at the risk of his place in the Cabinet. You will all be glad to learn that he was great enough to run that risk for the sake of a poor, humble black man. I hope that as he lay, slowly and quietly falling into the sleep of death, he saw the face of the poor man whose life he had sought to prolong. I hope he saw another face, and that he heard a voice, saying: "Inasmuch as ye have done it unto the least of these, my brethren, ye have done it unto me."

Mr. Charles J. Noyes of Boston followed Mr Russell and spoke substantially as follows:

There is an old legend that above the battle-field where a great human triumph has been achieved and grand deeds wrought, the souls of the dead heroes were wont to hover and to sanctify the field; and so I think we can feel, in view of the departure of Caleb Cushing, and standing in this chamber, so often dignified and ennobled by his presence and his work, that the soul of Caleb Cushing might well this morning be hovering over our heads calling upon us to do grand work for this Commonwealth, upon whose escutcheon his fame and his name have shed so imperishable a glory. Coming, Mr. Speaker, from the county to which he belongs, upon whose soil I am proud to say I was cradled, I feel it impossible for me to sit silent at this time and permit this resolution to pass through the House without giving it my second. A nation is apt to send its best men into the world; it is apt in sending to other nations messengers of mercy, bearers of glad tidings, or for the achievement of great service, it is apt to send its best men. Often has it been the good fortune of this nation to send Caleb Cushing across the water as a messenger from America: and to him, Mr. Speaker, belongs the proud distinction that, sent to the people that live by the gateway of the day, he achieved that first triumph, by virtue and by force of which the Chinese wall was broken down and commercial relations commenced between that people and ourselves; and from that time to this he has contributed in every department of learning, of science, and of statesmanship, such grand results, that, marching to the victor's crown, he bore in his arms most glorious sheaves.

The resolution was then unanimously adopted and the house adjourned.

PROCEEDINGS OF MASS. HISTORICAL SOCIETY.

JANUARY MEETING, 1879.

The stated monthly meeting was held on Thursday, the 9th instant, at 11 o'clock a.m.; the President, the Hon. Robert C. Winthrop, in the chair.

The President announced the death of two Resident Members and one Honorary Member, and said:—

In turning to announce the death of the Hon. Caleb Cushing, I may not forget that he, too, was counted among the lineal or collateral relations of our celebrated Boston minister, John Cotton, and that it was by the hand of our lamented associate, Mr. Brooks, that he presented to our archives, a few years ago, a manuscript volume, illustrating the Cotton Family, which had been elaborately prepared, at his instance, and at his expense, by his friend the late Mr. Somerby. The volume is on our table this morning, and will henceforth be associated with the memory of two of our number, whose deaths have been so nearly coincident.

Of Mr. Cushing's career it will be difficult for me to speak satisfactorily within the narrow compass of remark which befits such an occasion as the present. He had held so many public offices, and labored in so many diversified fields, that nothing brief or summary could do him any sort of justice.

A graduate of Harvard University with high rank at the early age of seventeen, in a class which included not a few celebrities among the living as well as among the dead, he was allowed but six or seven years in the study and practice of the law before being called to enter the Legislature of Massachusetts as a Representa-

tive from Newburyport. The very next year, 1826, saw him a Senator of our Commonwealth at twenty-six years of age. From that time to this he has been a public character, often in high official station, and hardly ever without some direct or indirect relation to public affairs.

As a representative in Congress for four terms; as the first Mayor of Newburyport, after it became a city; as one of the justices of the Supreme Court of Massachusetts for at least a year; as Attorney-General of the United States for four years; as Commissioner to the Celestial Empire, in which capacity he signed the first treaty between the United States and the Emperor of China; as one of the counsel of the United States at the great Geneva Arbitration; as Minister Plenipotentiary to Spain; and as again and again a member of our State Legislature, — a position to which he seemed never reluctant to return in the intervals of other employments, — in these and other ways he has certainly gone through as great a variety of responsible and conspicuous public service as has ever, I think, fallen to the lot of a Massachusetts man.

But not even this enumeration comprises all the labors and services, official and unofficial, which he undertook and discharged. He had an early passion for military studies and pursuits; and on the breaking out of the war with Mexico, in 1846, he found at last an opportunity to gratify this passion and turn these studies to account. He raised a regiment of volunteers, and equipped it mainly at his own expense. I remember receiving a letter from him at that time, — while I was in Congress myself, and when I had happily succeeded in carrying through an appropriation for compensating his services in China, — in which, after thanking me warmly for my efforts in his behalf, he added, "The money will come quite seasonably, as my regiment is making a great gap of upwards of $5,000 in my *peculium*." He served in Mexico to the end of the war, and came home with the rank of Brigadier-General.

It is well known that he offered to undertake the raising of another regiment for the defence of the Union in 1861. That offer, however, being rejected by Governor Andrew, he betook himself, not long afterwards, to Washington, where he found ample occupation in the civil service of the country, in connection with more than one of the Departments of Government.

I have said enough to give a vivid impression of the many-sided and marvellous capacity for work, which was the preeminent characteristic of Mr. Cushing. He was, indeed, a man of wonderful

versatility, of prodigious intellectual and physical endurance and energy; with no taste for recreation, no willingness for rest, and who seemed to find a positive luxury in every fresh field of labor which was opened to him.

I cannot forget that of the twelve members of the House of Representatives of the United States from Massachusetts, when I first entered Congress in December, 1840, the death of Mr. Cushing leaves me the only survivor. There were John Quincy Adams, Levi Lincoln, Leverett Saltonstall, George N. Briggs, of Berkshire, and John Reed, of Yarmouth, with others hardly less notable. Webster and John Davis were in the Senate. A more distinguished delegation neither Massachusetts nor any other State has ever sent to Washington, before or since.

I was thus associated with Mr. Cushing, at Washington, as a colleague and a friend, for several successive years, and was in the way of observing closely his peculiar qualities as a debater and a statesman. Differing from him far more frequently than I could agree with him, and by no means prejudiced in his favor, I was all the more trustworthy witness to his varied ability, his vast acquirements, his unwearied application, and his force and skill as a writer and speaker. Nor would I forget the many amiable traits of character which prevented differences of opinion or of party from sundering the ties of social intercourse. He knew how to abandon a policy, or quit a party, without quarreling with those whom he left behind. And so I can speak of him, and remember him to-day, as a friend.

Mr. Cushing was elected a member of this Society in 1859. He had written in his youth a History of Newburyport, a volume or two of Reminiscences of Spain, and an elaborate Review of the influences of the Three Days' Revolution in France. But, in later years, he was too busy, and too often absent from home, to take any part in our historical work, or even to attend our meetings. His name was added to our roll as the name of one who had himself become Historical, and who had played a distinguished part for half a century in the affairs of our Commonwealth and Country,—as an eminent scholar, a powerful writer, an accomplished diplomatist and jurist. Dying on the verge of his seventy-ninth year, he leaves the records of a crowded life to be studied by some future biographer.

It only remains for me to submit in behalf of the council of the society, the customary resolutions:—

Resolved, That the Massachusetts Historical Society have heard

with deep regret the announcement of the deaths of the Hon. Caleb Cushing and William G. Brooks, Esq.,*and that the President be requested to appoint two of our associates to prepare Memoirs of them for some future volume of our Proceedings.†

The President called first upon Mr. George B. Emerson a member with Mr. Cushing of the Class of 1817, who spoke substantially as follows :—

As I had the good fortune of being intimately acquainted with Mr. Cushing from the time when we entered college together in 1813 until his election as one of the representatives of Massachusetts in Congress in 1835, it is perhaps natural that you should ask me to say a few words in memory of those early days.

Mr. Cushing was in scholarship the most distinguished member of our class. After graduation, he was for several years a faithful tutor in the College, and during all this time it was my privilege to see him constantly. We had, I remember, a common place of exercise in Professor Everett's garden. I recall, too, with great delight, a vacation spent in Cambridge, in company with four other friends, at the end of our Junior year. We met for breakfast, then separated for our several studies, coming together again at the noon dinner. Many afternoons were spent in long walks. We made the acquaintance of all the plants within a radius of several miles from the College. And at night we studied the heavens together, learning nearly all the constellations then visible. Of all these Mr. Cushing retained for many years an almost perfect knowledge. Nor did he neglect or forget our botanical studies. His collection of plants, which I had the pleasure of seeing only a few years ago, was one of the best ever made in Essex County, or indeed in the State. Mr. Cushing had a marvellous facility for acquiring languages, and knew many, some uncommon ones, well. It is said that his acquaintance with the Tartar langague was so perfect that during all his residence in China as the representative of our government the services of the interpreter were not once needed. He was an omnivorous reader, devouring books in all languages; and he never forgot what he had once read.

My memory brings back to me many agreeable recollections of

*William G. Brooks Esq, a resident member, died January, 6, 1879.

†At the stated meeting of the Society held in February, President Winthrop appointed Charles W. Tuttle Esq. of Boston to prepare the Memoir of Mr. Cushing.

my friend, one of the most cultivated and accomplished talkers that ever lived. For three years of our Cambridge life, the Sunday evenings of each week were spent in President Kirkland's parlor, where with his charming family and Mr. Everett the time was passed with great pleasure and profit.

The President then called upon Mr. Charles W. Tuttle, Esq. of Boston, who said :—

I knew the late Caleb Cushing too well, and I revere his name and memory too highly, to venture to speak of him without studied preparation. His character and his career are too illustrious for brief and indiscriminate eulogy. I cannot, however, on this solemn occasion, when we have paused in our labors to pay the customary tribute of respect to the memory of our venerable associate, the great and highly gifted statesman, so recently gathered to his fathers, refrain from giving some reminiscences of him.

I do not remember that I ever heard of the late Mr. Cushing before he was selected for the memorable diplomatic mission to China, about thirty-five years ago. I was then a mere youth, and resided in New Hampshire. Suddenly, as it now seems to me, his name was in every newspaper and in every household in the town, utterly extinguishing the already waning excitement occasioned by the great comet and the delusive prophecy of the end of the world. All tongues were speaking of the novelty and magnitude of his foreign mission ; and of his great and various learning, unsurpassed eloquence, fine address, and distinguished personal appearance. I very well remember the pride with which some persons related instances of having seen him and heard him speak on public occasions. From what was then said of him, I was prepared to see a very remarkable man, whenever that might be.

Fifteen years elapsed before I had the pleasure of meeting Mr. Cushing. They were the most memorable years of his whole public life. During this period, he had achieved distinction in diplomacy, in war, in high judicial office, and in the Cabinet of President Pierce. When he returned from Washington where he had been during four years in the capacity of Attorney-General of the United States, I had just begun my professional career, and had settled in Newburyport. One day I was surprised with a visit from Mr. Cushing on some matters concerning a suit in court. He was then verging on threescore years of age, while he appeared not above fifty, with as fine an intellectual countenance as I had ever seen. His mental vigor, wealth of information, facility of expression, accuracy of

thought, logical statement, and rich clear voice impressed me that he was a far more extraordinary man than I had supposed him to be. Not long after, his private secretary, Mr. Spofford, formed with me a law partnership; and we had our offices in Boston, where Mr. Cushing joined us and shared our chambers. From this time to his decease, a period of about twenty years, I had the honor of his acquaintance and friendship.

Mr. Cushing was endowed with extraordinary intellectual powers, with an uncommonly fine physique and a vigorous constitution. Externally, nature had stamped him as a man of distinguished character. Such was the great versatility of his talents that he could master, with equal facility, any subject. Had he so determined, he might have gone down to posterity one of the great scientists or the great philologists of the age, as he has a great jurist and statesman. His capacity and equally great memory, his unwearied industry, his scorn of delight, and love of laborious days, enabled him to conquer all knowledge. I know of no subject of intellectual contemplation that lay outside the range of his meditations and studies. Like Bacon, he took all knowledge for his province; and like Bacon he aimed to find employment for his great talents and learning in the administration of the chief public affairs of the State. His name was already a popular synonyme for extensive culture and vast erudition when I first heard it mentioned.

Mr. Cushing was eminently a man of action as well as of speculation. His long career in the theatre of public affairs, often in high stations, shows this to be true. Various and diversified as were his public employments, he discharged them all with consummate ability and with the highest reputation. The lustre of his great name now gives a new dignity and importance to the stations he once filled. The late President Pierce told me, not long before his decease, that Mr. Cushing could have filled any place in his Cabinet with as much ability and reputation as he did that of Attorney-General: and that his eye ranged over all the affairs of the government.

He was extremely fond of public life. Even after he had achieved a national reputation, he was often a member of the Massachusetts Legislature. It was lamentable to see him, with all his experience, great abilities, and culture, employed about affairs so far below him, and not always above the reach and capacity of the average of men. His legislative career, however, is not without

distinction; many reformatory statutes and wise measures are due to his efforts.

His faculty of memory was astonishing. It was susceptible, retentive, and ready. Whatever once got there never came away, and never became impaired. It came forth at his bidding, and many are the instances where an antagonist has been suddenly overthrown and crushed by weapons promptly furnished from the vast storehouse of his memory. It was seldom that I repeated a familiar quotation where he did not instantly point out the inaccuracy of my memory in some inconsiderable matter, so accurate was his own. His maxim always was that whatever is worth remembering is worth remembering accurately.

He was a great linguist. He was master of the modern European languages, and spoke several with as much grace and ease as he did his own vernacular. The late Spanish Vice-Consul at this port, who was at Madrid when Mr. Cushing arrived there as Minister of the United States, told me that the Imperial Court was amazed to hear Mr. Cushing speak its language with the ease and accuracy of the best Spanish scholars, — a rare accomplishment, scarcely ever found among the Ambassadors from European Governments to that Court. His rich and deep-toned voice must have contributed much to the charm of his conversation in that sonorous language.

Mr. Cushing was extremely methodical, as much so in what he did as in what he said. Nothing ruffled him so much as disorder. No office clerk ever folded and filed away letters and documents with greater care. He would not suffer a book to lie carelessly on his table. Once I found him in his room in Washington in a high state of excitement over a confused statement in an important document. He declared that all the trouble in the world could be traced to confusion in the minds of men, and supported his proposition with abundant illustration.

He required less sleep and rest than any one I ever knew. He rose at sunrise, and wrought all day and half the night. He was the first to be found in the Athenæum and at his office in the morning, and the last to leave in the evening. His study lamp waxed not dim at midnight. There was no time wasted in frivolities and amusements. With these habits and good health, during a long life, it is not surprising that he arrived at so great knowledge and learning, and comprehended and executed with the greatest facility the highest functions in the government.

He was a firm patriot. There was no act or thought of his life

that was not intended for the glory and renown of his country. If he differed from others as patriotic as himself, it was regarding the means, not the end. Little is yet publicly known of his great services to our Government in its foreign relations since the breaking out of the civil war. He was at the bottom of many excellent State counsels during this time in which his name does not appear. That he was one of the most eminent publicists and diplomats of this period in America, I suppose, is not doubted. In the latter capacity, he may be compared with a Temple and a Gondomar.

As a jurist he had few equals. During the last twenty years of his life he was counsel in many of the greatest causes that came before the United States Supreme Court, — causes involving questions of the highest public concern. New questions, growing out of our complex system of government, always fascinated him. His analytical mind and broad intelligence found scope for exercise in these employments; and he had the whole country for his clientage.

In conversation he was extremely brilliant and effective; especially so if he encountered the least opposition. Woe be to him that dared maintain a general proposition against Mr. Cushing on such occasions. Distinctions, reasons, arguments, and authorities, organized and formulated by his logical and acute mind, poured forth incessantly until nothing was left of his combatant or his proposition. On these occasions, as well as in public debate, the breadth and variety of his attainments shone with great lustre.

Notwithstanding his long and varied public career, that shyness and diffidence, so manifest in his youth, never entirely wore away. It made him avoid contact with men and society all his life, and narrowed the circle of his friends and acquaintances. He had none of the arts of popularity. He never would descend to be everybody's humble servant, a qualification now so requisite for a successful politician. His native dignity, his culture, and his employments alike forbade it. These traits especially led the public to judge him to be cold and exclusive.

Unfortunately for him, he never was a good judge of men, — for the reason that he never mingled enough with them. Sometimes persons unworthy of his favor or consideration were successful in forcing themselves upon his attention, to the great regret of his friends.

He was always accounted ambitious, aspiring to high places in the Government, as if that were a reproach to a man universally

allowed to be statesman enough to guide a nation! If he were ambitious, there is ancient authority that ambition is the infirmity of noble minds. I believe no one living thinks it lessens his merits to have it said that he received light and strength from Mr. Cushing.

While he received every one with the greatest kindness and courtesy, and conversed with the greatest animation and pleasure, he had no strong social feelings. He formed no intimate personal friendships,— a great misfortune to him, in my view of his life. His joys and sorrows were locked in his own breast. He lived quietly and temperately in a fine old mansion adorned with works of the greatest masters, and with a fine library, in a kind of stately solitude. There was a Roman severity and simplicity in his life and character. I never heard him mention the landscape, or any of the beauties of nature, with any enthusiasm. He took a speculative or practical view of every thing around him. His mind was occupied with forces and powers. He was not, however, without a good deal of humor and pleasantry at times. There was no haughtiness in his composition.

No man ever yielded more readily or more cheerfully to a request for his influence or favor than Mr. Cushing. I know that he many times did offices of friendship to persons who knew not from whom they were derived. A memorable instance of his disinterested kindness is the letter which played so important a part in preventing his being Chief Justice of the Supreme Court of the United States.

He submitted with grace and dignity to the dreadful storms of fierce and malignant censure of his actions in public life, now and then hurled upon him. He knew it was the penalty imposed on men in his station. A sadness, however, rested on his majestic features: but he was as unmoved as a tower in the desert.

I cannot forget one occasion, many years ago, when his inquisitive mind found supreme satisfaction in speculations concerning celestial phenomena. Immediately after the optical discovery of a small star near Sirius, the most brilliant of the fixed stars, making a new binary system in the annals of astronomy, Mr. Clark, of Cambridge, appointed an evening and invited me to come and look at the little stranger through the same great telescope with which it had been first seen, and to bring my friends with me. Among the distinguished gentlemen of the party was Mr. Cushing, then a member of the Legislature. He gazed with thoughtful admiration on the new stellar system, as well as on the magnificent nebula in

Orion. The evening was extremely beautiful, the sky clear and serene. The powers of that already famous instrument brought clearly to view these splendid phenomena. It was apparent that what he saw made a deep impression on his mind. Not many days later he made a short speech in the House, which attracted public attention on account of the fine astronomical allusion in his argument. With great propriety he had drawn a parallel between this stellar system in the depths of space, and our political system then being tested in the civil war.

There is no question but that this remarkable man will make one of the most distinguished figures in the history of this age. The annals of our country furnish few names distinguished for so many and varied accomplishments. The public stations he filled of themselves appear small in the general estimation of such a man. His title to future eminence does not rest on them.

He is now beyond the reach of envy or malice. His life, a long one, burned to the socket. His system was not racked with pain or disease, but worn out. On Monday afternoon last, I was one of the melancholy train that followed his remains to their last resting-place on the banks of the Merrimac, where his eyes first opened to this world. His lifeless features had assumed all the manly beauty and composure which they had at the period of his middle life.

> "He was a scholar, and a ripe and good one.
> Exceeding wise, fair spoken, and persuading;
> Lofty and sour to them that loved him not:
> But, to those men that sought him, sweet as summer."

PROCEEDINGS OF THE U. S. SUPREME COURT.

The Bar of the Supreme Court of the United States met in the Court-room, in the Capitol, Washington, on Friday morning, January 10, 1879, at 11 o'clock, to pay respect to the memory of the late Caleb Cushing.

On motion, Hon. William M. Evarts was appointed Chairman, and Mr. D. W. Middleton, Secretary.

Mr. Phillips.— Mr. Chairman: I move that a committee of six be appointed to draft resolutions expressive of the respect of the members of this Bar for the memory of the deceased, to be presented to this meeting.

The motion was agreed to, and the following gentlemen were appointed by the Chair to constitute the committee:

Committee on Resolutions.

Mr. Philip Phillips, Chairman;
Mr. Charles Devens,
Mr. Roscoe Conkling,
Mr. Albert Pike,
Mr. A. T. Akerman,
Mr. George H. Williams.

The committee thereupon retired; and, on returning, reported, through Mr. Phillips, the following resolutions for adoption.

Resolved, That the Bar of the Supreme Court of the United States has been informed with deep regret of the death of Caleb

Cushing, for many years their associate as an able practitioner before this Court.

Resolved, That while the memory of Mr. Cushing deserves to be cherished as a citizen and a soldier, as a scholar and a historian, as a statesman and a diplomatist, the Bar desires especially to remember him to-day as a wise legislator, as an accomplished publicist, and as a profound and learned lawyer, whose services in all these capacities have been most honorable to himself and most valuable to the Republic.

Resolved, That the Attorney-General be requested to communicate these resolutions to the Court, and to move that they be entered of record.

Resolved, That they be communicated to the family of Mr. Cushing, with the expression of the earnest condolence of the Bar.

The Chairman.— Gentlemen, you have heard the resolutions reported by the committee. They are before the meeting.

Remarks of Mr. George H. Williams.

Mr. Chairman: I rise to second the resolutions and to say that in the death of Caleb Cushing a great man has fallen. Few men living or dead in the United States have had a more distinguished or varied career. More than fifty years ago his abilities attracted the public eye and were acknowledged by the public voice. During that time a mighty procession of events has passed into the history of our country, all of which he saw, and a part of which he was. Mr. Cushing was remarkable for his great wealth of learning. He discussed questions in the light of the experience and history of all ages and nations. He drank deeply at the fountains of ancient lore, as well as from the various streams of modern literature. His speeches in congress, as early as 1835, were models of erudition and eloquence. His opinions as Attorney-General of the United States, delivered before 1856, are still cited as authorities in the highest courts of the country.

He contributed largely to the public and diplomatic writings of the country, and always with great power and exhaustive learning, and his late mission to Spain was highly creditable to himself and to the country.

Mr. Cushing pursued his purposes in life with indomitable energy and industry. He never seemed to weary with intellectual work. His fine natural abilities and his immense acquisitions of knowledge

made him in every sense an able and accomplished man. I enjoyed the pleasure of his acquaintance for about fifteen years. I have met him in private and personal interviews, at the festive board and at the Bar of the Supreme Court, and though at times he lacked that condensation and clearness of thought and expression which I have observed in some others, he always and everywhere impressed me with the variety, extent, and richness of his intellectual resources.

Distinguished as he was in other ways, his fame will chiefly rest upon his reputation as a lawyer. I remember when, more than thirty years ago, I commenced the practice of my profession upon the western banks of the Mississippi, he was then and there known as a great lawyer, and if litigation from that section was transferred to Washington, it was generally supposed that the battle was more than half won by the party who secured the professional services of Mr. Cushing.

Our departed friend was an illustrious link in the chain, now too frequently broken by death, which connects this generation with the founders of the Republic. His eyes opened upon the dawn of the nineteenth century. He lived when John Adams was President, and the heroes of the Revolution were in the cabinet and councils of the nation. He commenced to live when our star of empire had just risen upon the eastern horizon, and he continued to live till he saw its benignant rays illumine a mighty continent of free and intelligent people. Three score years and ten, to which limit few lives attain, did not apparently impair the vigor of his mind or dim the brightness of his eye, but insidious time was slowly smothering the vital spark, and upon the verge of four score years of active, useful life, he gently and peacefully departed to his rest, like one lying down to pleasant dreams.

One after another in rapid succession the venerable men who have come down to us from the early days of the Republic are passing from our view, and while the Angel of Death with his shadowy hands transfers their mantles to our shoulders, history waits with anxiety to see if we are worthy to wear them.

I will not, because Mr. Cushing is dead, say that he was perfection, nor will I seek to drag his frailties from their dread abode. Justice and Charity appeal in vain for a true estimate of the motives and actions of public men, while Calumny can fill the public ear with its malicious clamor; but the tongue of Calumny is paralyzed at the open grave, and Justice and Charity can then be heard.

Happy indeed will the man be who can come down to the end of his days, after fifty years of public life, and leave in his history as much to admire and as little to condemn, as is found in the life of Caleb Cushing. To-day we are called upon, though the mortal remains of our professional brother lie in a distant State, to think of him not only in the pride and glory of his manhood, but as he now is —to think of the closed eyes, the pallid brow, the folded arms, and the awful stillness of death. While we give him up to the shroud, the coffin, and the tomb, and turn to the business and pleasures of life, it is a melancholy satisfaction to feel that we have forgotten his faults, whatever they were, and can only recall those qualities of his life and character which "smell sweet, and blossom in the dust."

Remarks of Mr. Albert Pike.

Mr. Chairman: He whose death has called us together here was one who, during a long life, served his profession and the Republic faithfully, and was crowned by each with high honors.

As he won those honors fairly, so he wore them gracefully; and with every one earned, renewed his exertions to deserve more; less desirous, I think, to win, than to have the right to, applause and glory.

"He belonged," it has been said since his death, "to a past generation." But Caleb Cushing did not lag superfluous on the stage, for it is but a little while since he retired from the service of his country at a foreign court, to find rest and pursue his studies at home; and none of us have grown much older since he rendered to his country at Geneva the most important service of his life, and displayed in amplest measure his ability and learning.

It is true, no doubt, that towards the last he lived more with the past than with the present. We all do so, as the shadows lengthen for us, in the evening of our life. It is true, no doubt, that for him, as for all of us who are old, the faces most loved were those of the unforgotten dead friends. But he who has lived worthily, has lived not for his own age only, but for all the coming generations; for his thoughts live after him, and his example and his influences. Upon the tomb of Cushing there will be no blank record of hours of indolence and folly.

He was one of those, who (I use in part the words of Holinshed), for their singularities of energy and learning, for their honor and government in and of the State, about this Capitol and elsewhere,

at home and abroad, deserve such commendations, that they merit *niveo signari lapillo.*

I knew Mr. Cushing when I was a boy. He was a young lawyer then, resolute to win success; and often passing his office, as I did, late at night, I always saw it lighted up. He lost few hours in sleep, and wasted none in dissipation or amusement. To that untiring industry and diligent study he owed the fame of after years. He accoutred himself, carefully and thoroughly, for the business and the battle of life, and entered the arena armed at all points.

I was not yet of the age to vote, when he had become so well and and favorably known as to be an almost successful candidate for a seat in the Congress of the United States. He was already among the foremost of the rising young men of Massachusetts.

After I attained manhood, I knew him as a scholar of varied acquirements, a man of letters, of genius and cultivated tastes; one, in the words of the biographer of Sir Henry Wotton, "excellently educated, and studious in all the liberal arts; in the knowledge whereof he attained unto a great perfection." I knew him as a reviewer, essayist and poet; neither, in the words of the same writer, "an uncomely nor an unprofitable employment for his age." For he did not confine his studies, then or ever afterwards, to the great province of the law alone, but sought and achieved distinction in other fields. His industry was great, and his reading immense. I do not know to what extent he was familiar with the writers of Rome and Greece, nor that he ever sought to explore the mysteries of Oriental learning; but he made himself familiar with the best writers in more than one modern language, and spoke some fluently, so as to be deemed abroad "a gentleman excellently accomplished both by learning and travel."

The records of the country contain the evidence of his qualifications to serve the country. He never engaged, I think, in anything, in which he did not acquit himself well. Whether a person, or the Republic, or a foreign government was his client, it was never said that he had not powers equal to the task that he had undertaken; and no cause, private or public, ever suffered from his want of ability, of knowledge, or of industrious preparation and energetic conducting. He served the country and his other clients faithfully and fearlessly.

Nor did any reproach, through him, ever come upon the profession; for he never forgot either its duties or its proprieties, amenities, and courtesies.

Later in life, I knew him in Mexico, when he served there with credit in command of a Brigade. Afterwards I heard him at the bar of the Supreme court here, knew him as a legislator, and had occasion at times to see him in his office of Attorney-General. Thereafter the currents of circumstances carried me in another direction, and from that time until his death I seldom saw him. Nor had I ever an acquaintance so intimate with him as to be able to speak of his temper and social qualities, his faults or virtues, as others can who knew him better.

Attached at different times to different political parties, he had the singular good fortune never to suffer under any grave imputation uttered by the rancorous tongue of Party or the Press. Nor did he ever, I think, display a vindictive spirit, or pronounce harsh and bitter judgment even upon those who maligned him. He always seemed to me a man of equable temper, amiable, kindly, and placable, of a most persuasive behavior and judicious discourse.

He was a man, ambitious, no doubt, "not rejecting honors and stations in this courtly and splendid world," but descending to no low arts to obtain honors; one not of haughty carriage, nor who put slights upon other men esteemed below him; a man of no pomp or pretence, of grave simplicity, "of an ancient freedom and integrity of mind."

I was, a little while ago, in the old town on the river Merrimac, where his home was all his life, and there heard him often spoken of by many, old and young, and by all not only with pride, but with affection; and, after all, to whatever heights of honor one may climb, and how widely soever his name may be known and honorably mentioned, it is the good opinion and the good word of those among whom he was reared and under the eyes of whom he has lived his life or the larger part of it, of his fellow-townsmen and his neighbors, that are the truest testimony of his desert and the most to be valued praise wherewith he can be crowned.

It would be idle affectation to resort to phrases of regret and sorrow, in speaking of the death of one who, after a singularly fortunate life, prolonged beyond the usual span, and in full possession of all his honors, has lain down in peace to await the resurrection, accompanied to the grave by the kindly thoughts of all his neighbors, spoken honorably of throughout the Republic, and with none whose opinion is worth regarding to fling a stone at his memory. He did not need a longer life. He had done enough for his country, enough for his own fame, and only death was needed to crown and

complete his work. It is death, chiefly, that gives authority and power to the wise thinkers and great writers, the profound jurists and incorruptible magistrates, and makes them the law-givers of states and nations. And if the great profession of the law would be honored by its servants, it must pay honor and do justice to their memories when they enter upon their inheritance of authority and immortality. It is to perform that office that we have come together.

Remarks of Frank W. Hackett.

Mr. President: A great lawyer, after more than half a century of untiring labor, has been gathered to his people. The bar of this court, who have admired his transcendent abilities, and now miss his familiar face, seek to place upon the record an expression of their sense of the magnitude of the loss they are called upon to sustain. In keeping with the occasion, it is left to the elders in the profession, who have known him longest, to pronounce a just estimate of his character. Permit me, however, to say a word or two in behalf of the younger members of the bar, in testimony of the reverence and kindly feeling with which we hold him in memory.

To those who were by many years his junior in practice, Mr. Cushing uniformly extended a generous aid and encouragement. His storehouse of legal knowledge he freely placed at their disposal. He pointed out defects, and gave to merit due and judicious praise. Young men went to him for counsel. Young men liked him; he understood them. Himself full of vigorous activity, in one sense Mr. Cushing never grew old. To a marked extent he harbored that youthful spirit, "*quod qui sequitur senex corpore esse poterit, animo nunquam erit.*"

It was my privilege seven years ago to accompany abroad Mr. Cushing in the capacity of private secretary, while he held the position of senior counsel for the United States before the Tribunal of Arbitration at Geneva. The relation I considered invaluable as an opportunity for mental discipline and legal training with a consummate master in the law. Of his eminent services to his country in that forum I will say nothing; it has become historical. Yet it is no disparagement to you, sir, or your able associates (both happily now living in the enjoyment of the highest honors of the Republic), to recall the fact that to Mr. Cushing especially the Government at that anxious period looked as to a tower of strength. But I can

testify that his world-wide reputation as an indefatigable worker is in no sense an exaggeration. With him memory was, indeed, a thesaurus of all subjects; yet when he drew upon it for his facts, the precision and accuracy with which he marshalled them to his use, was simply wonderful. So orderly were the workings of his mind that nearly all that portion of the argument of counsel assigned to him, he dictated at continuous sittings, and scarcely a line required revision.

Of his unbounded love for the acquisition of knowledge I may venture to cite a single instance. He brought to Geneva an acquaintance with the history of that locality—minute, and what to most men would have appeared ample. Not content with this, he got together and read in brief intervals from professional works, all sorts of books and pamphlets bearing upon the subject in veriest detail, till soon it became apparent that no citizen (I am tempted even not to except the professional antiquary,) could surpass him in the extent and variety of his information in this department.

But my chief purpose is to utter a word expressive of the gratitude with which we of a younger generation delight to honor the memory of Mr. Cushing. Doubtless many years will elapse before another leader at the bar displays talents worthy to be compared with his. But we may not forget the lesson his career plainly affords. Great as were his natural gifts, he improved every waking hour to keep them in constant use. May we fail not to apply ourselves with something of his ardor to the duties of our profession. "Seest thou a man diligent in his business, he shall stand before kings."

Remarks of H. W. Garnett.

Mr. Chairman: As my friend who has just taken his seat has said, I do not think it is unseemly, but highly proper, that we, the junior members of this bar, should express our feelings of admiration for Mr. Cushing. It is not however, sir, as statesman, diplomat, or lawyer that I desire, or, indeed, possess the power of speaking of him; in all these branches he has achieved success known to but few even of those who devote their undivided labors to a single pursuit; to speak of these successes belongs more properly to others older than I, to whom they are well known from experience. desire to speak of Mr. Cushing as I knew him, as a man of kind heart and generous impulses.

We all, sir, view our fellow-men from the particular sides of their characters which are presented to us, and he was to me "a guide, counsellor, and friend." I knew him well; I may say he was a friend by inheritance, for from my earliest days I have heard the name of Mr Cushing coupled with terms of friendship and regard.

He was not a man who "wore his heart upon his sleeve," but towards his friends there was no inconvenience, no labor, no trouble that he was not willing to undertake and undergo to serve them. I speak, sir, that I know. I have been with him also in his labors, and while laborious himself, he ever exhibited that regard towards the efforts of others, that thoughtfulness to prevent them from over-exertion, which could only be dictated by a kindness of heart. And, sir, I rise to-day not to offer any tribute worthy to be laid upon his tomb, but to say these few feeble words as an expression of that gratitude which I owe, and which I shall ever feel toward the memory of Mr. Caleb Cushing.

The resolutions were agreed to unanimously; and thereupon, on motion of Mr. Attorney-General Devens, the meeting adjourned.

SUPREME COURT OF THE UNITED STATES.

JANUARY 13, 1879.

Present: The Hon. MORRISON R. WAITE, *Chief Justice;*
Hon. NATHAN CLIFFORD,
Hon. NOAH H. SWAYNE,
Hon. SAMUEL F. MILLER,
Hon. STEPHEN J. FIELD,
Hon. WILLIAM STRONG,
Hon. JOSEPH P. BRADLEY,
Hon. JOHN M. HARLAN,
Associate Justices.

The Attorney-General addressed the Court as follows:

May it please your Honors:

I ask a few moments' delay in the regular progress of the business of the Court, that I may bring formally to its attention the decease of Caleb Cushing, of Massachusetts.

The high positions held by him in the service of the country, his eloquence, his learning and ability so often displayed in the debates of this Court, seem to render it proper that we should pause for some notice of the void which has been occasioned by his departure.

At the age of twenty-five, Mr. Cushing was already a distinguished figure in the politics of Massachusetts. Ten years later he came into the national councils, and from that time was prominent, alike in sunshine and storm, in the long historic era over which his life extended. How full that life was of important and varied public service will be seen when it is recalled that he was repeatedly a member of the legislature of his native State and of our National Congress, that he was a Justice of the Supreme Judicial Court of Massachusetts, that he was the Counsel of the United States in the Arbitration at Geneva, that he was its Foreign Minister at the Courts of China and of Spain, that he was the Attorney-General of the United States, and that to these civil services he added military service as a General in the Army during the war with Mexico.

In private character, and in social intercourse, Mr. Cushing was most attractive. His rare powers of conversation, his large and well-digested stores of learning, made him a fascinating companion to all who listened to him, while his readiness and cordial desire to serve others by the multitude of resources at his command, was always conspicuous.

Of his extended public career, of the political controversies in which he engaged or into which he was thrown, the present is not the time to speak. While one who has filled so large a space in public affairs must be judged as his life shall appear when viewed by the clear light of impartial history, the hour when he departs is not the time to disturb the ashes which have gathered over the slumbering fires of old and, in many instances, forgotten controversies. Nor, were this the time, would this ever be the place for their appropriate discussion. Yet it is appropriate to remember here, that so profound was his knowledge of international law, and of politics in the larger sense of the term, that to those Administrations of which he was not a member, nor even in direct sympathy, he was able to lend an aid, as counsellor in matters of a general character as distinguished from those of mere party controversy, which was held by them to be great and valuable.

Elsewhere justice will be done to his merits as an accurate observer and a graceful writer, to his accomplishments as a scholar and a linguist, and to his labors for the country as one of its states-

men and diplomatists. Here, and to-day, we would desire to recall him as the wise and profound lawyer, whose learning and ability have contributed to the discussion of many of the most important questions of his time.

His judicial career on the Supreme Bench of his native state was brief, but it was long enough to establish his reputation as a courteous, just, and able magistrate. But his true sphere as a lawyer was that of the advocate. His intellect was of the controversial cast, which adapted him for the conflict of the Bar rather than the calmer and graver duties of the Bench. Yet, while he was an opponent vigorous and persistent, he was always fair and candid. As a debater he was master of every resource, eloquent and adroit, always speaking from a full knowledge of the subject on which he spoke. He spared no labor in preparation, and his ready powers of acquisition enabled him to fortify himself with weapons of attack and defence drawn from every armory and storehouse of the law. The Reports of this Court furnish the evidence of the ability with which he discussed all matters, whether appearing as counsel for private parties or for the Government. The Opinions of the Attorneys-General attest how much skill and research he brought to those practical questions of administration which, as a cabinet officer, demanded from him the judgment of a learned and experienced lawyer. Nor should I fail to remember that as a legislator, alike in his native state and in the congress of the United States, he contributed wisely and generously to that public legislation which is independent of party controversy, even when deeply engrossed in the public conflicts of his time. The volume of the Revised Statutes of the United States which lies within reach of the hands of your Honors demonstrates his patient industry, although from its nature it could not testify to his genius as a legislator. By that exhaustive industry which would be content with no half-knowledge of any subject, but which would master each in turn, he supplemented, as successive occasions arose, his large knowledge of the science of government, of jurisprudence, of equity, of the common, the statute, and the maritime law, and of commercial and industrial affairs.

The illustrious magistrates who composed this Bench while he filled the office of Attorney-General have, with one exception, passed away. With some premonition, perhaps, that his own end was near (although he did not desist from projects of labor and study), Mr. Cushing, since his return from Madrid, a little more than a year since, has resided principally at his old home in New-

buryport. The anchor of the storm-worn ship was to fall where first its pennon had fluttered in the breeze. On January 2d, a little way from the spot where he had been born seventy-nine years before, he, too, has gone to his rest in the city which had honored and loved him in his youth, his manhood, and his maturer years.

The Bar of this Court have desired me, in testimony of their respect for his memory, to submit to the Court the resolutions which I have now the honor to read.

After the reading of the resolutions, Mr. Chief Justice Waite replied as follows:

The prominent position which Mr. Cushing has occupied in public affairs during so much of his long life, his great learning, his distinguished services as Attorney-General of the United States, and his large and varied practice at this bar, make it proper that his brethren should be permitted to place upon the records of the court their tribute to his memory. The court cordially approves of the resolutions that have been adopted, and of the remarks of the Attorney-General in presenting them here. What has been said is no more than is due to the occasion

It was my fortune to be associated with Mr. Cushing before the Tribunal of Arbitration at Geneva, and I should be false to my own feelings if I failed to record an expression of gratitude for the kindness and encouragement I received at his hands during all the time we were thus together. He was always just towards his juniors, and on that occasion he laid open his vast storehouse of knowledge for the free use of us all. While assuming that our success would be his, he was willing that his should be ours. He knew how much encouragement can lighten the burden of labor, and never failed to give it when opportunity was offered. Whatever he may have been to others, to us who were with him at Geneva, he will be remembered as a wise and prudent counsellor and a faithful friend.

The resolutions and the remarks of the Attorney-General in presenting them may be entered upon the records of the court.

MEMORIAL MEETING AT WASHINGTON, D. C.

A meeting of the citizens of Massachusetts, sojourning or residing at Washington, District of Columbia, was held at the Masonic Temple, in that city, on the evening of January 20th, 1879. Some two hundred gentlemen and ladies were present, including some of the most distinguished public men of Massachusetts.

Mr. George B. Faunce, President of the Massachusetts Association at Washington, called the meeting to order, and after pronouncing a short eulogy of the deceased statesman whom those present had assembled to honor, he invited Attorney-General Devens to preside.

Gen. Devens, on taking the chair, eloquently referred to the many aspects which Mr. Cushing's life presented, and trusted that his excellences in every path of life that he had followed, as a jurist, as a scholar, as a soldier, as a statesman, as a diplomat, would be spoken of that evening.

Mr. Benjamin S. Pike, of Newburyport, was chosen secretary of the meeting.

Major Ben: Perley Poore, of West Newbury, offered the following preamble and resolutions:

Whereas, it has pleased Almighty God to terminate the mortal existence of Caleb Cushing, a citizen of Newburyport, who has passed a large portion of the last fifty years of his life at this metropolis, it becomes us, Massachusetts men, residents or sojourners here, to express our sorrow for his loss and our admiration for his virtues, his learning, and his public services: Therefore,

Resolved, That we regard Caleb Cushing as one of the master-minds of the Old Commonwealth. His private life was marked by a love of his home on the bank of the Merrimac, by domestic pur-

ity, by a high sense of honor, by unwearied industry, and by devotion to his kindred and friends. In his long and varied public career he was equally distinguished as a profound jurist, an able parliamentarian, a ready writer, a gallant soldier, and an accomplished diplomat. His wonderful conversational powers, enriched and adorned by observation and reading in many lands for many years, made him a welcome guest wherever he went. He did not always agree with the majority of voters in Massachusetts, but he always evinced a profound affection for our country, and he was, under all circumstances and at all times, ready and willing to support its government with unfaltering loyalty. He will be missed here at the National Capital, and now that he has suddenly passed from the theatre of his fame, we and his other fellow-citizens should profit by the varied lessons of his eventful career.

Resolved, That we sympathize with the surviving relatives of the deceased, and with the many personal friends who lament his loss.

REMARKS OF MAJOR BEN: PERLEY POORE.

Mr. Chairman:—Having performed the duty assigned to me, gratitude for many acts of personal kindness prompts me to say a few words concerning the deceased, who was the life-long friend of my father and my mother. I was taught in my childhood to respect him, and I have always been an admirer of his wonderful talents, although I may not have agreed with him in opinions upon the political questions of the day. It has been my privilege to witness much of his illustrious career here at the Federal metropolis, where he has been for many years a prominent and a picturesque figure in public affairs, and where his name has been honorably connected with many important measures, foreign and domestic, that have exercised a powerful influence upon our national policy.

Caleb Cushing has been called the "admirable Crichton," of the present century, but while he rivalled that famous historical personage in versatility, in variety of attainments, and in facility of acquisition, he also possessed the stern common sense of the statesman and the man of the world. With all his readiness as a debater and a writer, however, he never omitted before treating a subject, to enter into the most laborious investigations that he might obtain a complete mastery of it. He was always ambitious to excel, as every man should be, and he was an indefatigable worker, showing great powers of endurance, although he was not a man of strong

physical powers. He never intrigued for honors or for place, but he ever felt that it was his duty never to decline public service, even when he knew that his nomination as a candidate on a political ticket could only be followed by defeat at the polls. Nor was he hampered by party ties which so often elevate men possessing small intellects, while they trammel and curb great minds. Pride of opinion often retains men in the wrong, and keeps them in partisan ranks, when conscience and conviction prompt them to avow their mistakes, and to sacrifice their associations to their judgments. Since Mr. Cushing first stood in the Capitol, as a representative of the Essex North district of Massachusetts, electricity and steam have accomplished marvels, and nearly every branch of mechanical industry has changed — he, with his wonderful mental activity, could not keep in one political net, but changed also. With an integrity that was never questioned and with an honor that was never tarnished, he fought his way in the battle of life in accordance with his own ideas of right and wrong, regardless of the political banner under which those convictions carried him.

Mr. Cushing's life here at Washington, even when he was holding high official position, was marked with great simplicity. In his rare intervals of relaxation from public or professional duties, he used to retreat from the busy metropolis to a small cottage, picturesquely situated near the great falls of the Potomac, and later in life he became the owner of a farm in Virginia, where he interested himself in agricultural pursuits. He was fond of works of art, which he viewed with appreciative and discriminating judgment, and he had a fondness for good books, especially those in the many foreign tongues which he read with facility. But his favorite relaxation was at the social board, and fortunate was the host who was able to count Mr. Cushing as his guest at a dinner party. His inexhaustible magazine of incident and anecdote concerning remarkable persons and events;—his thorough acquaintance with the prominent questions of the day on each shore of the Atlantic and of the Pacific;—his keen wit and sparkling epigrams never failed to fascinate those who sat at the same table with him. Senator Sumner, in the last years of his life, became devotedly attached to Mr. Cushing, and frequently invited him to his dinner parties. The sonorous sentences of the senator were illuminated by the brilliant comments of his guest, which reminded the fortunate hearers of the successive discharges of a Roman candle, each so bright and dazzling that it was difficult to say which was the most beautiful.

Constantly misrepresented and often misunderstood, the language of King Henry to Cardinal Woolsey might have been appropriately addressed to Mr. Cushing:

> "You have many enemies, that know not
> Why they are so, but, like to village curs,
> Bark when their fellows do."

But he was always understood and appreciated at Newburyport, where he was "the first citizen," and where the people, rising above party lines, always took a commendable pride in electing him to any position within their gift that he would accept. There, among the friends of his boyhood, his manhood and his old age, and solaced by loving relatives who sought to promote his comfort, he received his death-summons like a philosopher, and his spirit took its flight. There, on the bank of the beautiful Merrimac, his remains will rest in peace, and his shining fame will be treasured as a heritage of glory.

> "In vain the envious tongue upbraids,
> His name Old Newbury's heart shall keep,
> Till morning's latest sunlight fades
> On the blue tablet of the deep."

Remarks of Hon. George B. Loring.

Mr. Chairman:— In moving the adoption of the resolutions, I would remind the citizens of Massachusetts present that they have assembled to manifest their respect for one of the most distinguished of her sons on the field where his most important labors were performed, and to pay a tribute to his memory.

Massachusetts has a long, useful and illustrious record of the service of great men, among whom the name of Caleb Cushing stands with the foremost. Endowed with rare powers, both of mind and body, he commenced in his earliest youth the work of cultivation which gave him a high position among the scholars, statesmen, and jurists of our land. So early in life did his work begin that his public efforts, or public observation, at least, may be said to cover nearly the whole of the active, energetic and efficient operation of our government. Sixty years ago he had already established an intimate relation with the best scholars of our country, and had taken high rank in their honorable fraternity. At an age when most men are struggling on the very threshold of life, he had made himself conspicuous as an accomplished traveller, an author, a legislator,

both state and national. He then secured a position among the bright and powerful intellects of the world which he never lost through a long and busy life. His mind had immense powers of acquisition. Not distinguished for his creative faculty, not marked by a lofty and vivid imagination, he possessed a marvelous capacity for acquiring and using all knowledge which came within his reach, and of exploring with great rapidity and ease all the by-paths which always offer their treasures to active and capacious minds. And from his immense store of knowledge his associates in private and public life were always supplied with abundant information. In polite conversation, in profound legal investigation, in diplomatic debate, at home, abroad, in hours of business and of leisure, he was always the instructive, agreeable, and useful companion and adviser. So many-sided was his mind that he had the largest intellectual sympathy with all classes of men; sympathized with Webster in his love of the land, and with Choate in his love of books. For more than half a century it has been said of him that he was indeed an encyclopedia of profound, varied and useful knowledge.

But the characteristics of Mr. Cushing, not known perhaps to all who associated with him or to all who observed his conspicuous career, were as striking and interesting as these vast intellectual powers which won the admiration of his contemporaries. From his ancestors in Essex county he inherited the untiring industry and unwavering persistency and keen comprehension which made them successful business men and made him a successful scholar. He was identified from his birth, as they were, with the best phase of American life, and as a member of an enterprising commercial, manufacturing and agricultural community. Surrounded by the best institutions of learning, belonging to a people who sent forth into the world great lawyers and great theologians, he became naturally loyal to America and American institutions as he found them. He believed in the governmental organization of his country, and was proud of her power — not sentimentally, but with a strong and manly conviction of the importance of her position among the nations of the earth. That he was ambitious was never denied; but I think that in every step he took to gratify his ambition he was controlled by this feeling to which I have alluded. When he supported the administration of Mr. Adams he did it because he felt that the politics of that Federal school could alone clothe his country with honor and prosperity. When he advocated,

with Mr. Webster, in succeeding administrations, a fiscal system under the control of the federal government, he did it because he felt that a government which he supported was entitled to the power of regulating its own financial affairs. When he defied the sentiment of his own state and stood by Mr. Webster in supporting an administration which they had united to elect, he did it for the honor of his country, even though he closed the avenues to political power which had been opened before him. He took part in the Mexican war to protect the honor and enlarge the power of his country.

When he gave his support to what he considered the constitutional obligations of the people in a great political conflict, he did it because he believed that under the constitution might be found a remedy for all existing evils. He may have been impatient, he may have been unreasonable with those who placed any requirement or any obligation above the constitution. He may have been fanatical even in his feelings against opinions which seemed to him to threaten the government with overthrow. But it was his loyalty, as he understood it, which roused him to the conflict, and which sent him a negotiator of peace to South Carolina, and led him to offer his services to the Union army when his country was torn by civil war. He may have made mistakes, he may have, on account of his conspicuous personality, appeared at times to shape his course by his political ambition. But it will be found that in doing this he often sacrificed his local popularity, and in securing one advantage overthrew another manifestly greater. And I am sure that if we will examine his public services at home and abroad, in peace and in war, whether engaged in diplomatic negotiations or in domestic councils, we shall find that he was controlled by a sensitive and almost irritable loyalty, and by a profound confidence in the capacity of the government under which he was born. He was not an adroit politician, not always sagacious and wise with regard to his own personal interests; but he was always useful, always generous in bestowing his advice and assistance upon those who were engaged in managing our public affairs as a brilliant representative under one administration, a powerful cabinet minister under another, a personal adviser in the great conflict which weighed down another, and as counsel for his country in the difficult diplomatic dealings which grew out of the great war. He was not a reformer in any sense of the word, but he always supported, like a strong pillar, the institutions under which he was born. Had his active life covered

our early constitutional history, he would have ranked among the greatest men of that time. Had he stepped with his youthful powers into the era when the purification of the constitution commenced, he would have stood foremost in that great work. But, like many another in our land, his life covered so long and so conflicting a period in our history that the experience and education and associations of the past always seemed to interfere with the duties of the present. But, notwithstanding all the intricacies and trials of his political life, he has left behind a record of public service that cannot be forgotten while our government endures.

To his friends, also, Caleb Cushing was eminently loyal. He was scrupulously true to his personal obligations. He had a strong and intense attachment to his family; in all his tastes he was simple and unostentatious: was especially observant of the courtesies of life, and peculiarly regardless of his personal aggrandizement in his dealings with his fellow-men. His local attachments were great, and in all the activity and attractions of life in which he was so long engaged he always turned his steps towards his home in Massachusetts with the sense of loyalty and satisfaction characteristic of one who knows and realizes what a birthplace, with an inheritance of strong faculties, means.

A Suggestion from Gen. Butler.

Hon. Benjamin F. Butler, who entered the hall while Dr. Loring was speaking, suggested at this point that the friends of Mr. Cushing should not allow the opportunity to pass without arranging for some more public memorial. He suggested that a move be made upon the House of Representatives for a memorial service in their chamber. He thought some means should be taken to show the true loyalty with which Mr. Cushing had served his country with pen and sword.

Remarks of Hon. Henry L. Dawes.

Mr. Chairman:—I have not come here with any expectation of speaking to-night, but for the purpose of paying tribute, as one of the representatives of Massachusetts at the Capitol, to the distinguished character of the jurist, the diplomatist, the statesman, we are called upon to mourn. I cannot answer your call, therefore, in any manner becoming the occasion; I can only say

that Mr. Cushing has added not only largely to that wealth of accomplishment, of learning, and of power which our Commonwealth cherishes with so much just pride, but has left a national and world-wide fame, rare in any history. These, commanding homage everywhere, to us at home are among the treasures our people will guard and keep, and not suffer to be buried with him.

Mr. Cushing was remarkable everywhere. There was nothing commonplace in whatever he did or undertook. All along the checkered pathway of his life and pursuits, are seen the traces of a master hand. His early literary efforts gave promise of a brilliant career in letters. So too his earlier life as a lawyer before entering public life made it evident that, had he not broken away from the exacting demands of that "jealous mistress," the law would have found in him a great expounder. All his life here in Washington as a Representative was remarkable. In all the excitement of the great political struggles which marked that period, he was foremost in every phase of the contest. Then, entering the diplomatic service for a brief period, it was in a new field, and with a strange and wonderful people, and his work was also wonderful. Called, after many years of withdrawal from active practice and the study of the law, to the Bench of the highest court in our state, he remained in that position only long enough to demonstrate his judicial ability, and stepped from it to the Attorney-Generalship of the United States. In this office he encountered new and intricate questions growing out of Spanish titles under our then recent Mexican acquisitions, never before discussed in the Supreme Court. The amount of learning he there displayed was amazing. After he left that office he occupied for nearly the remainder of his life, a period of twenty years, a position in respect to the administration of public affairs here in Washington, at once anomalous and remarkable. I know of nothing like it either in our own or other governments. He was confidential adviser to different administrations, and in the most critical times through which the government was passing during that period his services were invaluable; their history is yet to be written. Much like Baron Stockmar aiding the different Ministries of the young queen of Great Britian, he guided men in authority here through difficult crises, and out of embarassing complications with wonderful skill. Thus did he illustrate every position he filled, the sure test of greatness.

Mr. Cushing was the charm and delight of every social circle he entered. Though differing with him *toto cœlo* in politics all my

life I nevertheless found him ever the most agreeable and entertaining of companions, full of cheerfulness, full of fact and philosophy, overflowing with humor and anecdote. His intimacy with and knowledge of public men covered a longer period and a greater diversity of character, intellectual and political, than any other man, I think, in our history. All in all, Mr. Cushing was a wonder. It is most fitting that Massachusetts men here to-night should pay tribute to such a character.—one of her sons,—however widely they may have differed from him while living.

Remarks of Gen. Banks.

Hon. N. P. Banks, in supporting the resolutions, alluded to the fact that if this country has excelled in anything it is in the production of character. Of all Americans the character of no one will be longer remembered than that of General Cushing. A man can be honored by denunciation as well as by insincere adulation. General Cushing was no pampered son of fortune. His life was a hard one, and he depended for his success upon his industry. No public man ever exhibited such a great capacity for work. There was no single service the Government or an individual could ask that he would not perform with the utmost alacrity. The speaker paid a high tribute to Mr. Cushing's profound scholarship.

When called upon to decide no man decided with more promptness than he did. It was in the last degree untrue to charge Mr. Cushing with wavering and with lack of determination. Speaking of Mr. Cushing's punctuality he referred to a ball given to members of Congress by citizens of the District a few years ago. The hour of assembling was eight o'clock. When the speaker entered the hall a few minutes after eight, there was a solitary figure standing in the centre of the hall. It was General Cushing. A few years later the speaker attended a public occasion at the Tuillieries. The hour named was nine. The speaker entered a few minutes later, and there was a solitary man in the hall. That man was Marshal Mac Mahon, now President of the Republic of [France. They were both prompt men.

Remarks of Richard S. Spofford esq.

Mr. Chairman:—A few words will suffice to-night, my friends, to attest my sympathy with you, as citizens of Massachusetts, in con-

templation of the mournful event which has assembled us together, and my sense of personal bereavement in the death of a valued friend. On some other occasion, when the grateful task can be accomplished with more of deliberate discrimination than now, when I, at any rate, shall be betterprepared to undertake it, it will be my dutiful endeavor to commemorate in some fitting manner the life and character of Mr. Cushing, as known and appreciated by me throughout a period of intimate association covering not less than a quarter of a century. To-night, however, in the full consciousness that this association, with its multiplicity of cherished experiences and incidents, is for ever ended, I am conscious of that degree of embarrassed feeling that will permit me to do little more than express my high appreciation of his character and public services, and, above all, my profound sense of those patriotic aspirations and motives by which he was uniformly governed.

It has been extremely grateful to me, as a friend and fellow-townsman, to observe with what demonstrations of respect, both of an official and unofficial character, the tidings of his decease have been received throughout the country. Nothing in this regard, I am glad to say, has been lacking which could evince the lofty estimate of his public and private character, and the general recognition of his distinguished career. In that highest of our judicial tribunals, the Supreme Court of the United States, the field in bygone years of so many of his forensic triumphs; by the Executive branch of the government, where he has left behind him an enduring record in the great office of Attorney-General, and one not less enduring in the Department of State; by the Legislature of Massachusetts, so many times honored by his presence and made illustrious by his shining efforts; by the surviving veterans of the campaigns of Mexico, mindful of his military fame; by the people of Newburyport, whose attachment to him, descending from father to son, through generations, no vicissitude of time or fortune could alienate, and which he fervently reciprocated; and now here, where we, his fellow-citizens of Massachusetts, sojourners at the Capitol, are met together in the performance of this memorial service,—all that the most considerate and partial feeling could prompt has been worthily and graciously bestowed in every form of tributary honor to his memory.

Thus, it may with truth be said, that if the hour of his death is to be considered unfortunate for the country which still has need of those superb attainments and powers which made him second to

none among the statesmen and publicists, it has not been inopportune for his fame. Nor, could it have been permitted to him, through some clairvoyance of the mind's vision, to have foreseen what has occurred, would he have regretted, I believe, with physical powers yielding to the approaches of age, the time of his departure. That so illustrious a man should have been thus widely honored, is but a criterion of the country's gratitude for arduous labors in more than one conspicuous sphere of public life, and for services not the less important that, in many instances, they have been rendered without the incitement of contemporary fame or the pride and prestige of official station.

Few, indeed, have brought to the service of the country abilities so distinguished and diversified as Mr. Cushing, and to none can be ascribed a more untiring zeal or a loftier patriotism. So constantly was he absorbed in public affairs from youth to age, so pre-occupied always with the toils, the studies, or the responsibilities of statesmanship, that he has appeared to me sometimes to be indifferent to —I should rather have said to be independent of—those solaces and charms of private life which are the customary requirement and support of men. Indeed, for him, childless and wifeless as he was, the sum and ultimate of life were found in the idea and name of country; so that he at least could say, with peculiar emphasis, in the poet's words —

> "That dear name
> Comprises home, kind kindred fostering friends,
> Protecting laws."

Nor was his devotion in this respect prompted by interested motives or a dishonorable ambition. So far from this, it will surprise many to know that it is only within a brief period that he has been relieved from embarassment in his private affairs, and that he leaves behind him no large possessions, the ordinary emolument of such labors as he endured. What is still more to his credit, be it said at this time, it concerned him little in what direction the winds of popular favor were blowing, the monitors and masters of his life were his convictions of right and duty, under all circumstances whatsoever.

Of the public men of America, living or departed, there is not one who, in my judgment, might with greater justification than he have applied to himself and his public conduct through a long and eventful life language such as that imputed to Cicero, whom in

many respects he resembled, and which a great cardinal once uttered in the Parliament of Paris:

"*In difficillimis reipublicæ temporibus urbem nunquam desorui, in prosperis nihil de publico delibavi, in desperatis nihil timui.*"

"In the worst times of the commonwealth I have never deserted the State; in its prosperity I have asked nothing for myself, and in its most adverse moments I never lost hope."

When, in a later age, some great orator of the Republic—the Pericles of its meridan splendor, or, if that be inevitable, the Demosthenes of its declining period—here in this grandest of Capitols, shall revert to our times and recount their history, few names upon the roll of our civic fame will seem more illustrious than his in honor of whom we are now assembled. The attritions of prejudice or passion, the misconceptions of ignorance, the blindness of jealousy or envy, for the time being, when political passions are dominant, the rancor of faction maligant as now, may, in some quarters, obscure the fame of one who was ever too thoughtless of its vindication; may serve even to detract from his personal merits and the value of his public labors. But in the future, these, the mere fleeting shadows of the moment, will be swept away, and, gathering a steadfast brilliancy with advancing years, the fame of Caleb Cushing will have a secure place and be proudly cherished in the hearts of his countrymen. Thus will our departed friend and fellow-citizen have achieved all that in human life is most honorable to men, the fitting reward of those unselfish toils which in the high walks of public duty still make ambition virtue,—ambition which was for him, and will be for the great in every age,

"The spur that the clear spirit doth raise
* * * * * *
To scorn delights and live laborious days."

By all it will then be clearly recognized that the true rank to be assigned to him is that of one among the greatest of statesman, the most learned of lawyers, the most patriotic of citizens, the most accomplished of men; and that, occupying this pre-eminent position, so great and valuable were his public services, it may truthfully be said that in his day and generation he was one of the pillars of the Republic.

A vote was then taken on the preamble and resolutions, which were unanimously adopted, the audience rising.

Dr. Loring moved that a committee of three be appointed to consider the suggestion made by General Butler in reference to public memorial exercises, and take action, if found desirable.

The motion was carried, and General Butler, General Banks, and Hon. George D. Robinson were appointed as the committee.*

The meeting was then ajourned, *sine die.*

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*The House having previously passed a resolution forbidding the use of its Hall for non-legislative purposes, the committee abandoned the proposition of Gen. Butler that Memorial Exercises be held there.

PROCEEDINGS OF THE MASS. SUPREME COURT.

At a special meeting of the Essex Bar Association, held January 7, 1879, Hon. Nathan W. Hazen of Andover, Hon. Eben F. Stone of Newburyport, Hon. Thomas B. Newhall of Lynn, Hon. William D. Northend of Salem, Hon. Charles P. Thompson of Gloucester, and Stephen B. Ives, jr., esq., of Salem, were appointed a committee to prepare and report to the Association, at an adjourned meeting to be held at Salem Court House on the first day of the April term of the Supreme Judicial Court, a suitable memorial or resolutions on the death of the late Hon. Caleb Cushing, for presentation to the Court at that time.

At the adjourned meeting of the Association the committee reported the memorial, which was unanimously adopted; and Stephen B. Ives, jr., esq., president of the Association, presented the same to the Court, Mr. Justice Morton presiding.

Judge Morton directed the memorial to be read, and the Hon. Nathan W. Hazen, chairman of the committee, read the following

MEMORIAL.

To the many eminent names before borne on the roll of deceased members of the Bar of Essex County the name of Caleb Cushing has now been added.

It belongs to us in commemorating him to trace his career, and to depict his character, as a lawyer, to such an extent as a brevity proper to the occasion will permit.

He was a descendant in the seventh generation from Matthew Cushing, who emigrated to this country in 1635, from Hingham, in the county of Norfolk, England: and in the fifth from Rev. Caleb Cushing of Salisbury, who gave proof of his truly Christian char-

acter by being one of thirty-nine ministers who signed a letter to Governor Dudley in 1707, approving the election of Leverett, a layman, to be president of Harvard College.

The subject of this memorial was born at Salisbury, in this county, January 17, 1800. He was educated for college at Newburyport,—to which place his father had removed,—mainly, it is said at the private school of Michael Walsh, author of a once famous arithmetic. Entering college with an imperfect preparation, he made such progress in his studies that he was awarded the salutatory oration, and graduated before he was seventeen years old. It is remembered of him, that in college he was reserved in his intercourse; that he sought no aid from others, and nothing was known of thoroughness of his studies until its fruit was developed. After being tutor in the college one year, he studied law in the office of Ebenezer Moseley at Newburyport, and was admitted to the Common Pleas Bar December 7, 1821, and afterwards at Suffolk to practice at this bar.

His studies at this time were various, and he acquired a wide fame for general knowledge. In his profession he seems to have been content to hold an equal rank with the very respectable gentlemen who then composed the bar of Newburyport. His first reported case is November 7, 1826. Rufus Choate was admitted September 7, 1823. It might be expected that contemporary, so long as they were in the same county, they would often be retained as opposing counsel in the same suit. There is a single case reported in which this occurred. No doubt there were other encounters between them. In 1832 there was filed a bill in equity praying for an injunction; Choate for plaintiffs, Cushing for defendants. On the hearing before Chief-Justice Shaw, he remarked, in granting the prayer of the bill, that, so far as he knew, it was the first injunction issued in the commonwealth.

In an indictment against the proprietors of Newburyport bridge, on the trial before a jury, Mr. Cushing in the defence, the commonwealth had the verdict. Mr. Choate was then retained, and it was discovered that the indictment did not expressly allege that a bridge had ever been built. The proceedings were thereupon quashed.

In 1827 Mr. Cushing met Mr. Webster, then in the maturity of his fame and power. The arguments are reported at unusual length. As reported, they do not seem to have aided the court, whose decision is put on ground not assumed by either of the counsel.

Mr. Cushing was elected to Congress in 1835. He soon became a distinguished member of the House of Representatives, and was placed upon the committee on Foreign Relations. In this capacity he made some highly valuable reports, even then developing unsettled questions between this country and Great Britian. During his service in Congress he seems nearly to have ceased his practice at the bar.

In 1843 he accepted the mission to China. His instructions were prepared by Mr. Webster, whose son accompanied him as Secretary of Legation. He was eminently successful in negotiating a treaty, which while it remained the rule between the nations served every purpose of peace and commerce.

To this succeeded his military service in Mexico, which closed in 1848.

He then opened an office in Boston, and resided at Newburyport. For the succeeding years there is no marked trace of him in his profession. From what has since appeared, these years were probably spent by him in the study of the law by the same habits which he had observed when in college.

A statute was passed April 20, 1852, giving an additional judge to the Supreme Judicial Court of Massachusetts. Mr. Cushing received the appointment, and took his seat on the bench at Suffolk in July following.

A *nisi prius* term of this court was then by law held on the second Tuesday of September in Berkshire, one week before the law term in the same county. This was the first term held for jury trials after his appointment: it was assigned to him.

While his reputation for general ability was familiar to them, yet the long period which had intervened since the limited practice of the law, which he ever attained, had wholly ceased, without notice of any later study, or of even an appearance in the profession known to them, made his advent into their county to preside at their term of its highest court, looked to with an uncommon interest by the learned bar of Berkshire.

There was a single jury trial: it was in a real action, and involved some questions upon subjects not of frequent occurrence. Judge Cushing reported the case. Abandoning the usual impersonality, he reports, "I was of opinion:" "I admitted the evidence;" "I instructed the jury." The rulings and instructions were embraced in five points to which exceptions were taken. Mr. Justice Dewey, giving the opinion in the case, closed it with these

words: "The result is all the exceptions overruled." Upon the trial of the cause before the jury, he seized at once the point raised, and was clear and prompt in his rulings. Through the term he was patient and courteous, and exceedingly gracious to the counsel. During the week he found leisure to be present at a trial before a justice of the peace. After it was concluded he gave the magistrate advice as to some points of policy to be observed, and of the duties of his office generally, which was much valued by the recipient.

While the opinions of the court have an equal value, each partakes the idiosyncrasies of its author. Those of Judge Cushing exhibit the great extent of his reading, the thoroughness of his studies, and the keenness and vigor of his intellect. His criticisms of reported cases are often highly instructive.

In the second case whose opinion was given by him, he corrects misconception of the law in reference to trustees summoned, which, from the cases cited, seems to have become general. In the same term, he criticises an English case, which he calls the anomalous case of Austin V. Drew, and comments upon it as given by four different reporters, each report differing from all the others. His opinion in the case is remarkable for the mastery which he exhibits over this whole series of reports, and for the clear rule of law which his ratiocination deduces from the whole. His opinion in the affirmative, that larceny may be committed of property of one who has unlawfully acquired it, is so drawn as to reconcile in the case law, morals and public policy. It would not be safe to assert, that all his opinions may be held up as models, it may however be suggested that each will tend to persuade the reader of its just right to authority.

At college and in early life the elocution of Mr. Cushing was defective. The more rapid rise of Mr. Choate is much to be attributed to his more ready and impassioned oratory. Whatever were the natural defects of Mr. Cushing in this respect, he subdued and corrected them until he became one of the most efficient speakers of his time. He presided at the National convention held at Charleston, South Carolina in 1860, and began his services on this occasion by an address to an audience of three thousand persons, when every syllable of his speech reached every one in the vast hall capable of containing such numbers. For ten consecutive days, the Sabbath only intervening, he presided over a meeting of more than two hundred and fifty members, holding for the most part two daily

sessions; the assembly all the time engaged in excited debates, and in the end unable to come to any agreement. The capacity for labor and of endurance shown by him on this occasion display the resources, mental and physical, which sustained him in the intense and protracted efforts to which he was subjected in the course of his later professional life.

He was perfectly formed and of medium size; his features regular and handsome; his face was highly expressive; in early youth it betrayed all his emotions. On one of his first entrances into the court house at Salem, he attracted the attention of Mr. Oliver, the learned author of Forms and Declarations, and of the Conveyancer, who inquired with much earnestness who he was: "For," said he, "he is the most ambitious person I ever saw; since he has sat there his face has flushed and paled half a dozen times." The life of the subject of the augury has verified its truth.

In March, 1853, Mr. Cushing accepted the office of Attorney General in the administration of President Pierce. The printed opinions of those officers, to the present time, fill thirteen volumes, of which those of Mr. Cushing are comprised in three volumes. These give vivid and clear views of American liberty and modes of government; they show how smoothly and how safely to the citizen they operate when guided by the law and controlled by the constitution. Nowhere better than here can the citizen reillumine the light and heat of patriotism, or the student better learn to appreciate the value of the political institutions which protect him, and which he in return is bound to support and cherish. They measure, too, the crime of whomsoever should substitute for them violence and arms, or persist in conduct calculated to stimulate others to such resorts.

Nobly, on several occasions, did the attorney-general defend and vindicate the honor and interests of his country. The necessities of Great Britain for the supply of soldiers to its armies in the war then pending with Russia led to attempts to enlist men in this country. The British ambassador then here, and some of the consuls of that nation, shared in these attempts. These violations of the most sacred rights of a nation were reproved by Mr. Cushing in a manner likely to prevent their repetition in all future time.

Application was made to the government for an indemnity for the alleged use of Jackson & Morton's patent for anæsthesia in surgical operations, which was referred to the attorney-general. After a full hearing he decided against the claim, on the ground of the in-

validity of the patent. After discussing various points of law, he closes his opinion in this scientific manner:

"I think that in the matter out of which came this patent, a signal service was performed, honorable to the parties and to their country. It was not the *discovery* of the anodyne effect of the inhalation of ether or other anæsthetic agents; it was not the *invention* of the performance of surgical operations on the human body which reduced to temporary insensibility by anæsthesia. These were ideas familiar for ages to men of science, and the discovery of which no more belongs to any individual, as property, than electricity, the fusibility of metals, the specific effects of opium, cinchona, mercury, the capacity of sleep, which Cervantes speaks of as a valuable invention, or any other of the ascertained qualities of matter, functions of animal life, or laws of inanimate matter. Neither of these things constitutes that honorable service performed in the present instance. That service consisted in the suggestion and execution of a series of experiments, which resulted in demonstrating the safety and utility of employing more frequently than had been done heretofore the known agents of anæsthesia, by known methods, in order to the known end of facilitating surgical operations. That was a great good, and worthy due honor."

"There could be no question of patent in the successive steps of discovery and demonstration, which, beginning with Copernicus, continued by Kepler and Galileo and consummated by Newton, unfolded the mysteries of the law of gravitation, and the composition of the solar and planetary systems of the universe."

"So there can be no patent for the expansibility of heated aqueous vapor, nor for its application to use, as a mechanical force: but there may be for specific instruments or methods of such application."

"In like manner, electro-magnetism cannot be patented, nor even its use as a means of communication, but particular means of its employment may be patented."

Since this opinion was given, the public has not heard of claims made under this patent.

Mr. Choate was retained and went once, at least, to Washington in reference to it. If it was formerly the part of Mr. Choate to inform Mr. Cushing that, so far as the indictment went on which his clients had been found guilty in building a bridge, the bridge itself might be a myth, it was now the part of Mr. Cushing to apprise Mr. Choate that the letters patent of his clients were a figment.

These distinguished brethren held each other in high esteem. They became, with Robert Rantoul, jr., joint purchasers of a large tract of Western lands; the whole speculation was finally assumed by Mr. Cushing. It subjected him to the vicissitudes of frontier litigation with an antagonist who proved to have equal determination. A long and undecided contest between them was closed by a voluntary partition of the estate.

The steadiness and intelligence with which the attorney-general held to the rule of law, his love and reverence for the constitution, his complete knowledge of the history of his country, must have been highly promotive of the success of any administration. That of President Pierce has accordingly been said to have been one of the most successful. Perhaps the affluence of learning, the skill of interpretation, and the power of analysis displayed in the three volumes of opinions by Mr. Cushing are not excelled in these characteristics by the work of any lawyer in the English language.

The reader of these opinions will observe and admire with what care their author has derived our political institutions, liberty and rules of judicial decision from the common law, and has drawn their origin from its fountains, from the Year Books, from Coke, Plowden, Viner, and all the ancient sages of our jurisprudence, and has traced the recognition of its precepts and principles through the whole series of modern reports, and even in the latest text writers. These researches were his own work, seldom aided by counsel on either side of the question presented.

In this office, as well as in Congress, the grounds of controversy existing between this country and Great Britain excited his attention, and he considered them as they occurred to him.

After his retirement from office he was retained in many highly important suits. One of the most remarkable was that of the Gaines claim to land in the city of New Orleans. The case in which he was engaged for the plaintiff and claimant, was the sixth suit in the Supreme Court of the United States for the same property. Each of the five former actions had been decided in favor of the defendant, who, however, was not the same person in all the suits. The record of the case in question consisted of one thousand printed pages. Among the subjects of investigations, one was into the criminal jurisdiction of the Spanish Inquisition. Judge Wayne in closing his opinion for the claimant said: "When hereafter some distinguished American lawyer shall retire from practice to write the history of his country's jurisprudence, this case will be regis-

tered by him as the most remarkable in the annals of its courts."

The Trent affair was an early incident of the late civil war. The capture of the Confederate citizens was the subject of general gratulation. Mr. Cushing decided at once that they could not be held, but must be surrendered upon the British demand. His judgment prevailed, and was carried into effect by a dispatch, to the writing of which he contributed, but its entire authorship is not to be ascribed to him. He saw in this event a sufficient cause for waking into life all the elements of discord subsisting between the two nations and our entrance into war with the wrong on our side.* Through the civil war Mr. Cushing was constantly consulted by Mr. Seward. So frequently were the calls for this purpose, that Mr. Cushing was induced to remove to Washington.

About this period he was on a learned commission to revise the Acts of Congress. Those who have had occasion to explore the vast and intricate mazes of the United States Statutes at large, will best comprehend the labor and care necessary to the performance of this duty, as it would be performed by him.

When the war had ceased the American government claimed from that of Great Britain reparation for damages inflicted by it upon this country during the conflict, and by reason of its existence. Mr. Cushing has stated more forcibly, than has been done by any other person, the charges to which the British government had thus subjected itself. The negotiation of the Clarendon Johnson Treaty followed, which was rejected by the Senate. The alternatives were war or fresh negotiation. The studies of Mr. Cushing had qualified him for an active agency at this crisis. He had an enumeration of the affairs and interests unsettled between the governments. He found there were five different subjects, involving forty-three articles to be provided for in any Treaty which should be a perfect settlement between them.

To negotiate such a treaty successfully must be the work of great knowledge and sagacity, of vast labor, and of much delicacy. When it had been agreed to negotiate, five commissioners were appointed on the part of the United States, three of whom spoke only when officially called upon, leaving the negotiation where it belonged, in the hands of the government, which for this purpose consisted of Mr. Fish here, and Mr. Schenck in London. It is not pretended that the Secretary or the Ambassador had more than a

*See note at the end of this Memorial.

general knowledge of the subjects of negotiation. Mr. Cushing had analyzed and classified them. They were fully in his mind, and could be dealt with by the ability he was so well known to possess. This state of knowledge upon the subject made it inevitable that the conduct of the negotiation should receive its first impulse from Mr. Cushing, while the ultimate decision and responsibility rested elsewhere.

The result of the negotiation was the treaty of Washington, which does provide for a perfect settlement between the two nations, embracing specifically the five subjects and forty-three articles enumerated by Mr. Cushing.

It referred the Alabama claims to an arbitration before which the United States and Great Britain were to appear, as parties to a suit at law. Mr. Cushing was counsel and agent for the United States. The American case, as filed with the arbitrators, consists of eight octavo volumes, comprising 5244 pages. The British case is contained in three volumes, and covers 2823 pages. The British counter case is in four volumes folio: this is equivalent to the plea and answer; the American is in three volumes folio.

The United States claimed for consequential damages: for damages to the nation in its sovereign capacity, as well as for damages to the individual citizen. Much heated discussion through the press followed upon the disclosure of the American case stating this claim. While the discussion went on, Mr. Cushing made his headquarters at Paris, as the great centre of international communication, and was busily engaged in preparing the American counter case, and in watching the current of discussion, and the state of opinion. When, therefore, the arbitration assembled at Geneva, he was well informed of all the influences to which any had been subjected who were concerned in it.

The arbitrators took cognizance of the claim for consequential damages, the injury done to the sovereignty of the nation. It was hence that the sum awarded, so much more than covered the claims for individual losses. The result was a triumph for our country. The honor of its achievement belongs to Mr. Cushing. To him also belongs the higher glory of being author of the Treaty of Washington.

Thus at Geneva, on the same plains of Europe where Waterloo and so many other bloody battles have been fought in every age in the settlement of national quarrels, our country, without shedding one drop of blood or adding one pang to the sum of human misery,

vindicated herself gained justice, and a victory full of glory, over the most powerful of nations.

In all this Mr. Cushing was as much the leader, as he would have been, if the commander of a conquering army. Equal honor at least is due to his memory, as if he had won the triumph by force of arms.

These services were rendered by him to his country, as a lawyer. It was his learning and skill, as a lawyer, which enabled him to render them.

After rendering these benefits to the nation, he was nominated to be Chief Justice of the United States. The nomination was withdrawn. Enquiry into even the alleged causes and pretexts will not change the obvious character of the transaction.

Through life Mr. Cushing was self reliant. He had the industry of Cicero, but he had no Atticus. Like Cicero, he was never a thorough partisan. He declared his purpose to maintain his individuality. He would never suffer himself to be absorbed in party. Hence he never secured to himself perfect political allegiance. The offices he held were given to his merits, and for the sake of his service in them. It happened to him, as we have seen in this brief recital, to enter office under circumstances calculated to provoke criticism on any failure or deficiency on his part. When he laid down office, his discharge of duty in it had been such, as to leave room only for praise and admiration.

His attainments in learning were such, as a thirst for knowledge, a love of labor, an unrivalled facility of acquisition, and a most retentive memory, supplied. His use of them was regulated by a severe and well disciplined taste, by habits of order and method, by a perfect control over his attention, by a keen perception, by extraordinary powers of analysis, and of concentration, and by a high respect for truth. He feared no task; he shrank from no toil; no undertaking, within the compass of human labor was too vast or too tedious for the encounter of his courage. The work he performed has not yet been measured; much of it is yet locked in the archives of state, or lost for the time in the region of documents. His name and memory, though for very different reasons, like those of the great English lawyer, must be "bequeathed to his countrymen after some time be passed over."

When posterity reckons the names of the heroes whose deeds and lives have honored and adorned humanity, it will count among them the name of Caleb Cushing. We seek to perform what belongs to

us to do: to claim for our profession the honor his name confers upon it; to illustrate his example, and to bear our testimony as witnesses, to his character and career.

NOTE. This brief relation presents an incident in the life of Mr. Cushing which deserves more notice than it has received. In a crisis of his country's fate, his vast and ready stores of learning were brought to its rescue. His voice from the first, and when it was nearly alone on his side, was raised in reprobation of the act of Capt. Wilkes. Well known persons remember that he spoke as related in the text: "It was," he said, "a violation of neutrality on our part."

The skill and ability with which the novel questions raised by the case were treated in the despatch, and its conclusion to restore the captives, saved this country from a war with Great Britian. Its people never respected our form of government, and when it seemed no longer capable of maintaining itself, it appeared to them, like the bundle of sticks in the legend, the dissolution of whose ties of union had rendered its parts contemptible. They were highly indignant that a vessel in their view nearly without a nation, should assault and board one of theirs, seize and carry away from it by violence persons under the protection of its flag on the high seas. The government responded to the popular feeling and, before a word had been heard upon the subject from that of the United States, besides other warlike measures, ordered its navy for this cause to prepare for immediate service.

The brief extracts which follow will show how the relations between the countries were affected, and what was the peril of the Union.

Mr. Adams, the Minister from the United States, in an official letter from London dated Nov. 29th, 1861, wrote, "There is little room to doubt that the same steamer which bears this will carry out a demand for an apology, and the restoration of the men. I confess that the turn things have taken gives me great anxiety for the fate of my unhappy country."

On Jan. 17th, 1862, he writes, "I have now received copies of all the papers connected with the affair of the Trent. The result is in the highest degree satisfactory."

"I need not add my testimony to the general tribute of admiration of the skilful manner in which the various difficulties and complications attending this unfortunate business has been met or avoided."

Mr. Adams, in his eulogy upon Mr. Seward, referring to his failure to receive support from the whole Cabinet in this measure, says of the whole negotiation," It was the act of Mr. Seward, and his name was to be associated with it whether for good or for evil." The eulogist adds with a just significance, "That name will ever stand at the foot of the despatch. In my belief that act saved the unity of the nation."

To this act Mr. Cushing was a party. The historian, competently acquainted with the lives and qualifications of both, and with the state paper before him, will give to each his due share of the high praise and ennobling honor which should follow a service so patriotic and so important.

Col. Eben F. Stone of Newburyport, in seconding the motion that the memorial be entered upon the files of the court, said:—

May it please your Honor:—I am not prepared to make any formal address, or to do justice to my own feelings, as I did not suppose the subject would be introduced at this time. I will, however, attempt to say a few words, which, perhaps, will assist the younger members of the Bar,—who never knew Mr. Cushing,—in forming a conception of the man, as distinct from his work. The memorial just read is an admirable sketch of Mr. Cushing's career as a lawyer and a public man: but there is a natural curiosity to know something about the man himself,—his organization and character. I knew him well, and enjoyed, for many years, the privilege of his society and friendship. It always seemed to me that Mr. Cushing's distinctive qualities were his strong physical constitution, his untiring industry, his remarkably capacious and retentive memory, his wonderful attainments, and his extraordinary force and vigor of mind. He was not a man of imagination, not a man of genius: so organized as to have little or no sympathy with men of genius,—but he was eminently a man of talents. His mind moved under the impulse of his will: and as a man of talents he was most extraordinary, dealing with the most difficult problems of law and government with the utmost ease and facility. He left the practice of law, early in life, for politics, but he had the qualities which would easily have made him prominent in our profession. Not that he had all the qualities of a great lawyer, using this term in its highest sense, which should include the jurist and something more, but he was especially qualified by nature and education to do, successfully, the work which appropriately belongs to the foremost men of our profession. When his active political career was substantially ended, he gave his time to the study and exposition of federal and international law, and soon mastered their rules and principles. He never gave much attention to the common law. It was not congenial to his taste. The first article of any pretension he ever wrote, was on the civil law, and it was published in the North American when he was only twenty-one years of age. The last literary production of his was an address on the civil law, delivered to the law school at Washington.

It is remarkable that this Bar should have produced three such extraordinary men, who were contemporaries, as Choate, Cushing, and Rantoul, all three of whom were not only distinguished at the

Bar, but also in the eouncils of the state and nation. It would be interesting to eompare the three, but this is not the time nor the place to attempt it. I will simply say, that as Essex men, and as members of the Essex Bar, we shall always feel as if, in an especial sense, they were our property, and our production. It is for us to bear ourselves as worthy of such associates.

Hon. William D. Northend of Salem, said:

May it please your Honor: — A great man, a great jnrist, a great statesman, has passed away. The man who for so long a period has been regarded with just pride by his fellow-citizens of this county, in the fullness of time, and crowned with honors such as few men have ever enjoyed, has closed his mortal career. Caleb Cushing possessed, in a remarkable degree, all the qualities and attributes which are essential for the aecomplishment of the largest intellectual results. He had a robust constitution and great natural abilities, and, with these endowments, extraordinary perseveranee and industry. The amount of labor he performed was almost incredible. I remember well of Mr. Choate speaking of his industry as beyond that of any man he had ever known. This was on his return from Washington, where he had been engaged for some days in consultation with Mr. Cushing, who was then attorney-general of the United States. Those who remember Mr. Choate's nntiring industry will appreciate the force of this high compliment to his distinguished friend. There was no subject upon which Mr. Cushing had not made himself proficient, and the wealth of learning he always showed, not only in his studied efforts, but in his eonversation with his friends, was truly wonderful. As an example to young men who aspire to high intellectual attainments, the life of Mr. Cushing may be stndied with the greatest profit.

But I would not forget to speak of the social qualities of this great man. Those who enjoyed the privilege of an intimate personal acquaintanee with him will ever remember his uniform kindness. He never seemed to be in the least affected by pride of position or station. For his friends he had at all times a hearty welcome, without affectation or reserve. He always took a great interest in the affairs of the community in which he lived, and no one of his neighbors, however humble, ever sought his advice but it was freely and cordially given. His neighbors always felt that in Mr. Cushing they had a valuable friend.

It is peculiarly fitting that the Bar of Essex county should commemorate the eminent qualities and services of their deeeased asso-

ciate, and that the admirable memorial prepared by Mr. Hazen should be placed upon the records of this court.

Remarks of Judge Morton.

This is not the place nor the occasion to attempt to delineate the intellectual and personal character of a citizen who has filled so large a place in the public eye as the late Caleb Cushing.

But we may briefly allude to the qualities which were the foundation of his fame, and in which he is most worthy of remembrance and emulation.

For sixty years of a most active life he maintained the high reputation with which he left college. In talents, versatile; in reading, omniverous; in study and mental labor, indefatigable; of him it could be said, with more truth than of almost any man of his time, *labor ipse voluptas.*

No stage of his long and varied career affords a better or more characteristic portrait of him than his brief term of service upon this bench.

For some years previously he had been so engrossed in other fields of labor that some entertained doubts of the fitness of the appointment. But those who doubted did not know the man.

He immediately concentrated his remarkable faculties upon his new duties, and was said in the space of six weeks to have read through the entire series of the Massachusetts Reports; he surprised the whole bar by the ease and ability with which he presided at *nisi prius;* and I have been told by his colleagues, not one of whom survives, that he took a leading part in the consultations of the full court, especially upon questions of constitutional and public law.

After a service of but ten months he resigned, to accept the office of attorney-general of the United States. Since that time his valuable public services are familiar to all and have been fittingly referred to in the memorial of the Bar; his learning and his counsel have been a support to successive administrations of the national governments; and his studies in jurisprudence, politics, history and literature were continued without interruption to the end of his long life. *In his studiis laboribusque virenti, non intelligitur quando obrepat senectus. Ita sensim sine sensu aetas senescit: nec subito frangitur: sed diuturnitate extinguitur.*

Concurring in the sentiments of the memorial presented by the Bar, I shall order that, out of respect to the memory of Mr. Cushing, the memorial be recorded and the court be now adjourned.

PROCEEDINGS IN THE U. S. CIRCUIT COURT,

DISTRICT OF MASSACHUSETTS.

At a meeting of the members of the Bar of the Circuit Court of the United States, held January 22, 1879, on motion of Hon. Charles Levi Woodbury, a committee of three was appointed to draw up an expression of their appreciation of the character and services of the late Hon. Caleb Cushing. The following gentlemen were appointed a committee: Hon. Charles Levi Woodbury, Hon. Henry W. Paine and Hon. Charles Theodore Russell.

At an adjourned meeting held May 22, the committee made the following

REPORT.

This Bar, in common with the citizens of Massachusetts, in the death of General Cushing, mourns the loss of one of its oldest and most distinguished members. During the fifty-five years since he first became a practising lawyer, the circle of his fame has been constantly enlarging. Thrice he had represented his fellow-citizens in Congress, when he was appointed minister plenipotentiary to open diplomatic intercourse with the Chinese government. To his voluntary offer of his sword as the colonel of the Massachusetts regiment of volunteers in the Mexican war, the President and Senate added before its close the distinction of a commission as brigadier-general.

After peace with Mexico he returned to private life and soon accepted the position of justice of the Supreme Judicial Court of Massachusetts, where his characteristic industry quickly supplied the deficiencies which these divergencies into political, military and diplomatic pursuits had tended to produce, and placed him on a level with his associates in even the technical and routine acquisi-

tions needed to expound in full the judicial system of this commonwealth.

On the accession of General Pierce to the presidency he was called to the high office of attorney-general of the United States, where his vast and varied legal acquirements became more conspicuous. There was no branch of public law in which he failed to distinguish himself. The law of nations, the complex system of federal jurisdiction, admiralty and commercial law were not more facile in his grasp than the land laws of the United States and the civil code, on which so largely rest the land titles west of the Mississippi. To him, also, is due the organization of the attorney-general's office into the present administrative department of justice. It would not be sufficient to say of our departed brother that he did well in this highest position in our Union of a practising lawyer. He did more: he won renown by his acquirements, his industry and his facility of employing them.

In 1857 he left public office and resumed private practice in the state and federal courts, and for nearly twenty-five years carried on a practice so large as to tax even his wonderful strength, and one which involved the most varied knowledge that one lawyer was ever called to furnish for his clients' aid and protection.

During both the administrations of Mr. Lincoln and Mr. Johnson, the assistance of Mr. Cushing in the diplomatic discussions of public law by the State department was often invoked and highly appreciated.

When past seventy years of age General Grant wisely selected him as one of the counsel for the United States on the occasion of the Geneva arbitration: and on his return nominated him for chief justice of the United States. Political reasons induced him to decline the nomination and subsequently to accept the mission to Spain, with which nation many complex questions had brought our government into very delicate relations.

In 1877 he returned home, resumed the practice of law, and died with the harness on, retaining till the last his powers of mind unimpaired, and exercising them with an industry that never faltered.

In this brief sketch of the brilliant career of this distinguished son of our Commonwealth, culminating in the highest spheres of duty of his profession, we cannot, as members of that profession, fail to appreciate his allegiance to it, in that, while ever sensible of, and often yielding to the attractions of literature, statesmanship and diplomacy, his active mind, in its mature vigor, found its great-

est scope and most constant exercise in the practice of the law.

His impressive oratory, conspicuous alike in his public life and at the bar, the large and varied attainments in literature, statesmanship, diplomacy and law, which his discriminating mind, extensive reading, retentive memory, unflagging industry, and an intellectual force which failed in its energies only with the end of a prolonged life, enabled him to accumulate and command, have stamped him as one of the most marked men of his country and time.

We, his brethren at this bar, desire in this memorial to bear our testimony to his eminence and his worth, and to place this, our tribute, upon the records of this court.

The Hon. Charles Levi Woodbury, who presented the report, spoke briefly in eulogy of Mr. Cushing's legal talent, choosing to give the other speakers an opportunity to speak upon his other qualities. He praised his kindness to the young members of the bar, and said no words could add to his fame as a jurist. He, also, spoke of the brilliancy of his conversation, the variety of his stores of knowledge, and the great services he had rendered in the state legislature, to the jurisprudence of the commonwealth. He referred to the regard his fellow-citizens of Newburyport had always shown for his worth and usefulness, in frequently electing him to the legislature without regard to party lines, when in general politics he was with the minority. This fact was an honorable monument of the courage and public spirit of Newburyport, and and an eloquent eulogium on the private worth of General Cushing.

General Benjamin F. Butler then said:

Mr. Chairman:—On occasions like the present, when appreciative friendship commemorates the services, and recalls with kindly thought the striking traits of character, of one whom it seeks to honor, I have very often thought

> "The poor common words of courtesy
> Are such a very mockery."

I therefore crave indulgence if I deviate from the well-worn track to take the opportunity of giving expression to some of the peculiar traits of character, as shown in the course of the professional life and public services of Mr. Cushing, as they have become known to

me through a friendship of the duration of more than a generation.

The peculiarity of Mr. Cushing as a lawyer I deem to have been, that he was pre-eminently learned and great in one branch of the law, and most eminent in all. Other lawyers of his generation had some specialty in which they shone conspicuous over all: but, speaking in the hearing of those who know, I insist that it was his characteristic, that, while he stood foremost of all as learned in public law, he was equal to any in his learning in every branch of the law. A great English statesman made the charge upon our profession, that "learning in the law narrowed the mind." If so, Caleb Cushing was most proudly an exception to that rule. In every department of belles-lettres, in acquirement of languages, in knowledge upon scientific questions, in acquaintance with history, in knowledge of ethnology, for thorough and intimate mastery of every branch of political science, he had no superior, if even an equal.

If called upon to give the leading idiosyncrasy of his character, I should sum it all up in the word "loyalty:" covering by that term personal fealty to friendships, faithfulness to a fault in every service, professional or political, in which he was engaged, and, above all, loyalty to his country and her Government, bearing true faith and allegiance to his State, always subservient to his higher and broader obligation to the United States. As her citizen he held in high honor the Commonwealth of Massachusetts. No more eloquent or worthier tribute has ever been paid to Massachusetts than fell from his lips in early life in his first appearance in the Congress of the United States.

Not blind to what he deemed her faults,—ever tender of them,—he was eagle-eyed to discover and eager to point out her virtues. But to the Government of the United States, to the whole country, he bore, if I may so express myself, a higher and holier allegiance. To him the Government of the United States was an entity. It mattered not who administered her affairs: he served his country with equal fidelity, whether those charged with the execution of her government were political friends or foes. To him the Government of the United States, using his own words, was a "fixed fact:" and he ever strove to serve his Government, irrespective of the personal qualities of the men who for the time being exerted its powers. Like the Highlander who sacrificed, one after another, his nine brave sons to cover the cowardice of his chieftain, so Mr. Cushing was ever ready to give up everything to serve his Government, however much he was opposed to the idiosyncrasies of those at the

head of it. This was seen in his treatment of John Tyler's administration; and this trait of his character caused the careless and unthinking not unfrequently to misunderstand his acts and impugn his motives.

Men, and great men, have ofttimes used their mighty powers to thwart the purposes and embarrass the action of administrations to which they were politically opposed. Not so with Mr. Cushing. Never assuming that any man whom the people had vested with the administration of the government could wish to do aught but what might redound to the unity and prosperity of his country, Mr. Cushing, from the very bent of his mind, sought opportunity and found reasons for supporting every act of Government.

This trait was as fully illustrated as in any epoch of his life when he served as the law officer of the Government during the administration of President Pierce. Learned lawyers, astute politicians, and in some instances profound statesmen, had occupied the position before him; and until he took the office the Attorney-General was in the habit of accepting retainers to argue private cases in the Supreme Court. He put an end to that custom. Devoting the whole energies of his nature, his untiring industry, and great capacity, to the service of his chief, who, in his eye, was the President of the United States only, and his superior, he raised the office of Attorney General, and organized it to be in truth and in fact a department of the Government, and the Department of Justice. His knowledge of affairs, his great learning, pervaded and became an aid to every portion of the administration. It is no discredit to the statesman who were in the cabinet, to say that they all relied on him.

How thoroughly this was so, will be seen in the three volumes of his opinions, which contain a body of public law, a series of discussions upon every possible question of administration and every possible relation of the Government to the people and to the States, which is nowhere equalled since Bacon in thoroughness of argument and scope of knowledge. Nor do Mr. Cushing's labors all appear in these volumes. He aided the Secretary of State, Marcy, —than whom none was greater,—in defining our relations of neutrality as between Russia and Great Britain, and laid the foundation of that code of laws which should govern neutrals, which years afterwards stood for so much when we claimed by the treaty of Washington reparation for the violation of neutrality by Great Britain in the war of 1861. Mr. Cushing will be found to have

systematized the administration of our laws in relation to our public lands, especially in that most difficult part as applied to territory newly acquired from Mexico.

The unity of a President and his cabinet preserved during an entire administration is thought to be a desideratum. The cabinet of President Pierce has the merit of having been the first and only one which did not change in its personnel during its four years of administration.

This result, as I happen to know, was due, in one instance at least, not only to the executive tact and grace of the President, but largely to the patriotism, the good sense and the judicious action of Mr. Cushing, in definitely settling, in one of his exhaustive opinions, the line of demarcation between the rights, powers, and duties of the Secretary of War as a civil officer, and of the general of the army and his subordinates as military officers.

Lieut-Gen. Scott, the conqueror of Mexico, the candidate against Gen. Pierce for the office of President, during his administration commander of the armies of the United States, claimed for himself and the officers of the army extended powers and rights in the conduct of the army and military subjects, which Mr. Davis, the Secretary of War, as a civilian, refused to recognize. The conflicting claims of these high officers put President Pierce in a very delicate position in deciding the questions in difference between them. It is a matter of well-known history, that, on account of what Jefferson Davis believed to be the unfair and very selfish treatment of Gen. Taylor in the Mexican war by Gen. Scott,— treatment which Davis conceived went to the extent of taking troops away from Taylor in order that the latter might reap no laurels from his attempted overland march to Vera Cruz by way of Buena Vista,—Mr. Davis became violent and hostile in his relations with Scott. It is also matter of history, that the accounts of Scott, while the latter was in command in Mexico, were not satisfactory to the accounting-officers of the treasury, and were not passed during the administrations of Polk, Taylor, or Fillmore, but were left as a legacy to the administration of Pierce. It was probably this hostility between Davis as Secretary of War, and Scott as general-in-chief, which indueed the latter to ask that his headquarters might be in New York; which request was granted. Out of these things and other things, came a most bitter but very clever correspondence between Davis and Scott, which was printed at the time, and which quite rivalled the celebrated Marcy-Scott controversy. Meanwhile the Mexican

accounts of Scott and other administrative questions came before Pierce on a sort of appeal, and he referred a part to Attorney-General Cushing for his advice; and upon that advice, when received, the President decided to act. This so annoyed Mr. Davis, that he tendered his resignation, which Pierce promptly accepted; but, on the intervention of Mr. Dobbin, the advice of Mr. Cushing and the action of the President were seen by Mr. Davis to be so just, that he asked to withdraw the resignation.

From the time Mr. Cushing left the office of Attorney-General, in in 1857, he has never ceased to be the called-for and chosen adviser of every successive administration, down to the present, in difficult questions of internal policy or foreign relation. We can see proof of this, as we refer to other and later acts of his life.

Mr. Cushing foresaw very early the necessary and inevitable result of the agitation of the slavery question in the disruption of the Union. Although humane and kind-hearted to a fault, yet the wrong done to the slave touched him not. And why? He saw clearly that the bonds of the slave could not be broken unless the ties which bound his country together as a nation were to be severed. If that was to be the dire result of the liberation of the black man, what was slavery weighed in the other scale? By his loyalty to the country, he satisfied his conscience and his judgment that it was better that hundreds should perish in slavery, if need be, rather than that his country should be dismembered and destroyed, or thousands die to save it. He believed that in the unity of the country was the hope of mankind for free institutions and free government. If the Union was destroyed, and our system of government failed,—he believed it must fail before slavery could be eradicated,—then, to him, all was lost.

To use his own words, which I may also quote in another place: "I have no desire to survive the overthrow of the Government of the United States." Nay, more: he believed further that slavery could not be eradicated without war; and he believed that the result of such a war would be to establish imperialism; and he gave voice to that belief in Norfolk, when he uttered that which has now become an idiom of our language, "The march of the man on horseback." Is it quite certain that this belief was not prophetic, and such will not be the secondary effect of our great war?

May we not thus well see, that with this habit of thought, believing all this, seeing it so clearly that he may be said to have known it,—can we not understand how a just, kind-hearted Christian man,

in the choice of two evils, said in his heart, "Better slavery, great as its evil, than to fly to ills we know not of?"

In 1860, therefore, his only political thought was, How can the Union of the States be preserved, and the Government perpetuated? and how can war be averted? for, with the last, the destruction of the others must surely come. To attain this end, every concession must be yielded, every sacrifice must be made.

To accomplish this, he went to Charleston in 1860, and presided over the convention of the Democratic party for ten successive days. He saw, with unutterable anguish, the delegates of six of the cotton states secede from that body. If that secession went on, war was inevitable; and his thought, and that of those who acted with him was, What can be done to bring these states back? A rupture of the Democratic party was a rupture of the Union. An adjournment to Baltimore was carried: but, when the convention re-assembled there, the places of those seceding delegates were filled by men elected subsequently to the adjournment, and who wholly misrepresented the feelings of their States: and the convention divided, and two candidates for the Presidency were put in the field by the Democratic party, in two factions. The rest is history.

In December, 1860, after the election of President Lincoln, when the commissioners from South Carolina came to Washington to present the ordinance of secession, Mr. Cushing deemed war a certain event. On the 23d of December of that year, with two or three personal friends in Washington, the certainty of the approach of war was discussed; and one of those friends turned to myself, and said, "Well, Gen. Butler, you are a general in the Massachusetts militia, and if the war comes you will have to go. You had better resign your commission now."—"No, general," interposed Mr. Cushing, "certainly not: it may be that to the military organization of the North the country will have to look for its safety." Then, lost in thought for a moment, he looked up and said, "What would one give to know which subaltern of the United States army will be the next President of the United States?" From that hour he took but one part in public affairs, and that against his own judgment at the request of others. Mr. Cushing made a journey to Charleston at the request of the members of the Supreme Court, to do what he might to stay the tide of secession until better and wiser counsels could prevail. This patriotic effort was misrepresented by the press; and it was charged and believed that he went to South Carolina to give advice in the interests of rebellion.

Sumter surrendered on the 15th of April, 1861. On the 24th of April, at a flag-raising in Newburyport, in the presence of his fellow-citizens, Mr. Cushing made a speech, from which I abstract the following paragraph :—

'He had before him the question which had occurred to public men in other countries when political convulsions divided friend from friend, and brother from brother, and sometimes arrayed them against one another in hostile camps and in deadly strife. What, in such a case, is the dictate of duty? Should we retire into safe seclusion in a foreign country, to return in better times, to wear the honors of freedom, like Hyde? or should we remain to affront the perils of our lot, like Falkland or Vane? The latter course, if not the safer one, is at any rate the more courageous one. He [Mr. Cushing] chose so to act. He was a citizen of the United States, owing allegiance to the Constitution, and bound by constitutional duty to support its Government, and he should do so. He was a son of Massachusetts, attached to her by ties of birth and affection, and from which neither friend nor foe should sever him. He would yield to no man in faithfulness to the Union, or in zeal for the maintenance of the laws and the constitutional authorities of the Union; and to that end he stood prepared, if occasion should call for it, to testify his sense of public duty by entering the field again, at the command of the Commonwealth or of the Union.

Acting upon the same patriotic impulse, he wrote a letter to Gov. Andrew, which I transcribe :—

NEWBURYPORT, 25 April, 1861.

SIR,—I beg leave to tender myself to you in any capacity, however humble, in which it may be possible for me to contribute to the public weal in the present critical emergency. I have no desire to survive the overthrow of the Government of the United States. I am ready for any sacrifice to avert such a catastrophe, and I ask only to be permitted to lay down my life in the service of the Commonwealth and of the United States.

I am very respectfully,

C. CUSHING.

His Excellency JOHN A. ANDREW, *Governor of the Commonwealth.*

This official communication was accompanied by an unofficial letter, in which he called to the governor's mind the political differences between them, but that now all political questions were buried, in view of the raging war.

Were ever sentiments of purer patriotism uttered or written? Was ever a more generous offer of great capacity, of untiring industry, and of full allegiance both to his State and nation, with desire to lay down his life in the service of either, made by mortal man?

Was this any new position, in time of war, for Gen. Cushing to take? On the 8th of January, 1847, when speaking of the duty of

Massachusetts men as to another war then raging, and urging that the Commonwealth should take part on the side of the country, Mr. Cushing said.—

"Parties may play with public affairs in time of peace, and agitate upon this or that trivial question of the day; but when war comes, parties cannot stand before it; in its irresistible march, it crushes them like a tornado tearing its pathway through the forest. It absorbs, controls, dominates, all the passions and emotions of men and of nations."

Have I not well said that the characteristic trait of Mr. Cushing was loyalty to his country.

All remember the answer of Gov. Andrew.—in substance that Massachusetts had no place, in council or in field, for such a man as Caleb Cushing.

That answer was cruel; but not now is the time, or here the place, to animadvert upon it or apologize for it.

How Mr. Cushing regarded it, you may see from a letter written at the time to a life-long friend: —

NEWBURYPORT, 2 May, 1861.

DEAR SIR, — The Governor's letter is merely insulting. It is in the spirit of the atrocious acts proposed in New York and Boston, which imply the utter barbarism of the whole North. This letter relieves my conscience of the sense of public duty in virtue of allegiance. I am reflecting on passive probabilities, remaining in Massachusetts to meet the worst, an exile, or emigration to California or the North-west. I have been very busy, assorting and filing papers for any emergency, and am now pretty nearly ready.

Yours, C. C.

The effect was not to cause Cushing to swerve one hair in his loyalty to the Government of the United States. With many men it might have been different.

In the autumn of 1861 wiser counsels prevailed, at least in the administration of the Government of the United States; for President Lincoln himself authorized the recruitment of a Division in New England, and officered it by an order under his own hand, the majority of the commanding officers of which had been associates of Mr. Cushing in the Charleston convention, and nine-tenths of whose men had voted with him at the polls against Mr. Lincoln. This Division was specially designated for operations in the Gulf Slave States at the mouth of the Mississippi.

In that hour of deadly peril, would it have been well to have driven away from the service of the United States every Democrat who had preferred the unity of the country to the extinction of slavery? That question, history has answered.

While this Division was organizing, came the seizure of the British mail-steamer "Trent," by Capt. Wilkes, and the capture therefrom of Mason and Slidell, the Confederate ambassadors to England and France, with their retinue. This capture raised very grave questions of international law between this country and Great Britain, whether this act of Wilkes could be justified by his Government.

Upon this question the opinion of Mr. Cushing was asked, first by Mr. Secretary Seward, and second by the merchants of New York, through the mayor of the city, because its solution had an important bearing upon their commercial adventures. I have before me a printed copy, bearing date Nov. 29, 1861, of the opinion to the merchants of New York. I myself carried the opinion of Mr. Cushing — in which he paid me the great compliment to ask me to unite — to Washington, and read it to Mr. Seward. His reply was: "You gentlemen are doubtless right in your law; but I shall be obliged to send back Mason and Sliddell, notwithstanding."

That opinion, I doubt not, may be found among the papers of the case in the archives of the State Department.

Well and vigorously reasoned, supported by copious quotations from leading writers of international law, and jurists, especially those of England, including Lord Stowell and Philimore, that opinion was most emphatic and decided, that Wilkes not only should be justified by our Government; but, further, that we were entitled to hold the rebel ambassadors, and England had no just cause for complaint. I take leave to quote a few of the closing sentences from Mr. Cushing's opinion to the merchants of New York: —

"Those gentlemen, when brought within the jurisdiction of the United States, are subject to be dealt with as prisoners of war, or they may be proceeded against for treason, as Mr. Laurens was; but they could not be dealt with by us in either of those capacities while they were on board 'The Trent.' We are to find a reason to justify their personal arrest while there. We have that sufficient reason, I think, in the fact that they were diplomatic ministers of the government of the insurgent States, commissioned as such, and as such destined for Great Britain and France. That is the simplest expression of the case, and, in my opinion, the true and only tenable ground on which to maintain the act of Capt. Wilkes.

. . . . . .

"To conclude, then: In my judgement, the act of Capt. Wilkes was one which any and every self-respecting nation must and would have done by its own sovereign right and power, regardless of consequences. It was an act which, it cannot be doubted, Great Britain would have done under the same

circumstances. At the same time, it was an act amply justified by the principles and doctrines of international jurisprudence. We may well regret that occasion for the act has occurred, and that the seizure needed to be done from on board a vessel, and still more a mail packet of Great Britain, with whom, for all possible reasons, we desire to continue on the footing of cordial amity. But, Messrs. Mason and Slidell not having been embarked on board of 'The Trent,' by the British Government, that Government, as such, has not been offended by the seizure. 'The Trent,' her officers acting on their own responsibility, would have no immunity from the ordinary laws of war, which affect the vessels of a great power equally as of a small one; and Great Britain cannot fail, I think, to perceive that, as no offence was intended to her in the matter, and as rights of belligerency were exercised by Capt. Wilkes in the most moderate form, without seizure of the mails, without bringing in as prize, without injury to private property, her national pride and her national honor conspire to dictate the amicable construction of this act of sovereignty and belligerent right of the United States."

But alas for the truth of history! Eighteen years have not passed away since that most important opinion was given; and the sod was not yet green over the grave of its author, when I find, in a memorial prepared in behalf of the members of the Bar Association of Mr. Cushing's native county, Essex, in commemoration of his services and character, which was entered upon the records of the Supreme Court of Massachusetts, the following sentences:—

"The 'Trent' affair was an early incident of the civil war. The capture of the Confederate citizens was the subject of general gratulation. Mr. Cushing advised at once that they could not be held, but must be surrendered upon the British demand. That judgment prevailed, and was carried into effect by a despatch, to the writing of which he contributed, but its entire authorship is not to be ascribed to him."

I cannot hope that this feeble tribute of my friendship to this great publicist will find a place upon the records of this Circuit Court of the United States; but I will take care, with the leave of the court, that a copy of it will find place among its files, so that at least the court in one circuit of the United States in which Mr. Cushing so largely practised may have the benefit of his opinion when, hereafter in another war, the same question may be put in issue.

President Lincoln, appreciating this exhibition of loyalty and desire to serve his country on the part of Mr. Cushing, at the request of the general commanding, appointed Mr. Cushing as a brigadier-general of volunteers, and assigned him to duty in the Division then being recruited, of which I have spoken; but subsequently withdrew his name from the Senate by the inspiration of the Governor

of Massachusetts, who was not then friendly either to the commanding general or the prospective brigadier, upon the suggestion that such an appointment would be a reflection upon him for having refused the services of Gen. Cushing earlier in the war.

I pass over Mr. Cushing's distinguished services to the Government in connection with the Washington treaty, the most distinguished part which he took before the great tribunal of arbitration at Geneva, where he alone of all the counsel employed by both nations could speak to that august body in a language which all the judges could understand and fully comprehend; for these are all matters of written and undisputed history, and my aim is only to set history right as far as I know it, so that his loyalty to his country may more distinctly appear, and that his character may be fully disclosed, and that all who chose so to do may know them.

Upon the occurrence of a vacancy in the office of chief justice of the Supreme Court of the United States, President Grant tendered the nomination to that high office to Mr. Cushing as a tribute to his great services to the country as its legal adviser.

Of his fitness for that office, save the possible disqualification of age, no question was raised; for Mr. Cushing had held with high honor a place upon the supreme bench of Massachusetts, upon which, as we know, there ever have been and are now men eminently fit to take such position in the Supreme Court of the United States.

Opposition arose to the nomination in the Senate, led by a senator from the Pacific slope, who had formerly, as a boy, been a printer in a newspaper office in Newburyport, and held some grievance. The sole ground of opposition was the fact that Mr. Cushing, early in the spring of 1861, had written a harmless letter of introduction of a former clerk in his office, who belonged in the South and who was going back there, to the President of the Confederate States. This letter, if it had been published when it was written, would never have caused a passing thought; but Mr. Cushing, sensitive to any possible ground of opposition, wrote to the President to withdraw his name, which was done, and he remained in the lucrative practice of his profession, the annual reward of which was four times the salary of the office to which he was named.

I have to apologize for the time I have taken; but I have to do a service to the country by placing before the court in a true light the services and traits of character of one of its greatest advocates and

ablest jurists; and I have been impelled so to do by a sense of duty to the friendship which this great man has for many years bestowed upon me, and only desire to add, with the deepest sensibility of regret, Would that what I say were worthier of the man!

On motion of Hon. Charles Theodore Russell the resolutions were unanimously adopted, and were directed to be presented to the Circuit Court through the United States Attorney. The meeting then dissolved.

The Circuit Court immediately opened, Judges Lowell and Nelson taking their places on the Bench.

Hon. George P. Sanger, United States Attorney, then read the resolutions of the Bar, and moved that they be spread on the records of the Court.

Judge Lowell replied, saying that the elaborate resolutions offered by the committee on the life, attainments and career of Caleb Cushing left but little for him to add. The law was but one of the professions in which his extraordinary abilities made a marked success. He highly praised the opinions delivered by Caleb Cushing while on the bench. His services in the judiciary department at Washington he thought of the highest order. He mentioned especially his reorganization of the office, putting it substantially upon the foundation of a Department, though it did not assume that name until afterwards; and citing several opinions upon constitutional and international questions, such as, the respective powers of Congress and of the Executive, the foreign enlistment act, and others. His eminent abilities and services to his country would ever entitle him to the respect of his brethren at the bar and his fellow-citizens.

The Court, cordially concurring in the resolutions, ordered them to be entered upon the records.

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